

RECEIVED  
FEDERAL ELECTION  
COMMISSION

2016 FEB 10 PM 4: 49

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

**PRE-MUR: 579**

**DATES RECEIVED:** August 6, 2014 (Original)  
September 19, 2014 (Amended)  
March 4, 2015 (Supplement)  
May 4, 2015 (Supplement)  
May 15, 2015 (Supplement)  
October 9, 2015 (Supplement)

**DATE ACTIVATED:** October 19, 2015

**SOL:** August 24, 2016 to September 27, 2017  
**ELECTION CYCLES:** 2012, 2014

**SOURCE:** *Sua Sponte* Submission

**RESPONDENTS:** MV Transportation, Inc.  
R. Carter Pate  
Brad Cornelsen

**RELEVANT STATUTES  
AND REGULATIONS:** 52 U.S.C. § 30118<sup>1</sup>  
52 U.S.C. § 30119  
52 U.S.C. § 30122  
11 C.F.R. § 110.4  
11 C.F.R. § 114.2  
11 C.F.R. § 115.2

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

This matter was generated by a joint *sua sponte* submission by MV Transportation, Inc. ("MV") and R. Carter Pate, MV's former Chief Executive Officer ("CEO"). The submission notified the Commission that MV reimbursed Pate for six political contributions totaling \$43,100

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

1 that Pate made to federal candidates and political committees between 2011 and 2013. It appears  
2 that Pate, as CEO and with the help of his MV assistants, made the six contributions in his name  
3 from his personal checking account as "business decisions" to benefit MV, in some cases to gain  
4 access to government officials who hosted or attended political fundraisers. Pate or his assistant  
5 would then send a copy of Pate's personal contribution check to Brad Cornelsen, MV's former  
6 Chief Financial Officer ("CFO"),<sup>2</sup> for approval and reimbursement by the corporation.  
7 Cornelsen approved the six reimbursement requests, and MV's Payroll Department reimbursed  
8 Pate for those amounts through payments it categorized as bonuses, which were "grossed up" to  
9 account for taxes.

10 The records submitted by MV and Pate indicate that MV reimbursed Pate for a total of  
11 \$43,100 in federal contributions. Pate, in a sworn statement, asserts that he did not know that  
12 "corporate reimbursement for federal political contributions was improper," but other facts in the  
13 submission, including Pate's apparent efforts to conceal the reimbursements and his experience  
14 in government relations and with federal political campaigns, suggest that Pate knew his conduct  
15 was unlawful. Accordingly, we recommend that the Commission open a MUR and find reason  
16 to believe that MV and Pate knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R.  
17 § 110.4(b)(1)(i) and (ii) by making contributions in the name of another and knowingly  
18 permitting Pate's name to be used to effect such contributions. Further, we recommend that the  
19 Commission find reason to believe that MV and Pate knowingly and willfully violated 52 U.S.C.

<sup>2</sup> Shortly after filing their original joint *sua sponte* submission, MV and Pate filed an amended *sua sponte* submission that, among other things, named Cornelsen as the individual who approved Pate's reimbursement requests. Cornelsen declined to join in the *sua sponte* submission, but was notified of the information provided in it. He submitted a Response asserting that he did not have authority to approve the reimbursements and that Pate told him that he had obtained the proper approvals from MV's General Counsel and Board of Directors. MV also filed a series of supplements providing additional factual information, including memoranda of interviews from MV's internal investigation.

1 § 30118(a) and 11 C.F.R. § 114.2(b) and (e) by making prohibited corporate contributions, and  
2 reason to believe that MV knowingly and willfully violated 52 U.S.C. § 30119(a) and 11 C.F.R.  
3 § 115.2(a) by making contributions as a federal contractor. We also recommend that the  
4 Commission find reason to believe that Cornelsen violated 52 U.S.C. §§ 30122 and 30118(a) and  
5 11 C.F.R. §§ 110.4(b)(iii) and 114.2(e) by helping and assisting Pate to make corporate and  
6 federal contractor contributions in the name of another. Finally, we recommend that the  
7 Commission authorize pre-probable cause conciliation with each of the respondents.

## 8 II. FACTUAL BACKGROUND

### 9 A. Respondents

10 MV is a privately held corporation providing passenger transportation services  
11 throughout the United States.<sup>3</sup> Since 2008, MV has contracted with the U.S. Department of  
12 Veterans Affairs to provide ambulance services and special needs transportation.<sup>4</sup> At the time of  
13 the joint *sua sponte* submission, Jon Monson served as CEO and on the Board of Directors.<sup>5</sup>  
14 Monson also served as CEO from 1999 through 2011.<sup>6</sup> MV has since informed us, however, that  
15 he is no longer a director of MV.<sup>7</sup>

16 R. Carter Pate became CEO of MV in late 2011.<sup>8</sup> In that capacity, he also served on the  
17 Board of Directors.<sup>9</sup> Before that, Pate was the Global and U.S. Managing Partner for the Capital

<sup>3</sup> Amended Submission at 1-2.

<sup>4</sup> According to [www.usaspending.gov](http://www.usaspending.gov), MV Transportation, Inc. was awarded contracts with Veterans Affairs totaling \$611,712 in fiscal year 2011, \$840,000 in fiscal year 2012, and \$6,726,402 in fiscal year 2013. *See* <https://www.usaspending.gov/transparency/Pages/RecipientSearch.aspx?name=MV> (last accessed Oct. 29, 2015).

<sup>5</sup> *See* Amended Submission at 1.

<sup>6</sup> *Id.*

<sup>7</sup> MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>8</sup> Amended Submission at 2; Statement of R. Carter Pate ¶ 1 (Apr. 30, 2015) (attached to Pate Supp. Submission (May 4, 2015)) ("Pate Statement").

<sup>9</sup> *Id.*

17-0014440-15

1 Projects, Infrastructure, and Government Practice at PricewaterhouseCoopers.<sup>10</sup> Pate retired as  
2 MV's CEO and Board member in September 2014.<sup>11</sup> As of September 2014, however, he  
3 continued to work with MV as a Strategic Advisor to the Board.<sup>12</sup> Throughout his career as an  
4 executive, it appears that Pate had significant experience with federal political campaigns and  
5 fundraising.<sup>13</sup>

6 Brad Cornelsen was CFO of MV.<sup>14</sup> According to the joint *sua sponte* submission, MV  
7 terminated Cornelsen's employment in April 2014 for reasons unrelated to the reimbursements at  
8 issue in this matter.<sup>15</sup>

9 **B. Discovery of Reimbursements**

10 During MV's internal analysis of executive compensation in April 2014, Pate "reported  
11 certain unusual executive bonus payments" to the MV Board.<sup>16</sup> The Board then retained a law  
12 firm to conduct an internal investigation "regarding the executive bonus payments and other  
13 possible financial irregularities."<sup>17</sup> Through this investigation, the Board learned that between

---

<sup>10</sup> *Id.*

<sup>11</sup> Amended Submission at 3.

<sup>12</sup> *Id.*

<sup>13</sup> See Cornelsen Resp. at 1 (noting Pate's experience as "former [John McCain 2008's] Virginia State Finance Chair"); Memorandum of Investigation, May 30, 2014 Interview of Carter Pate at 2-3, 14 (attached to MV Supp. Submission (March 2, 2015)) ("Pate MOI") (noting that Pate made contributions at PricewaterhouseCoopers, "raised money for John McCain," and "knew how politicians raised money for access"); Memorandum of Investigation, June 2, 2014 Interview of Jennifer Wiley, Chief of Staff to Pate at 5 (attached to MV Supp. Submission (March 2, 2015)) ("Wiley MOI") (noting that Pate "has been actively involved in fundraising and politics for some time," including the McCain, Bush, and Romney campaigns); Memorandum of Investigation, May 22, 2014 Interview of Kevin Klicka at 5 (attached to MV Supp. Submission (March 2, 2015)) ("Klicka MOI") (discussing Pate's involvement in politics and fundraising).

<sup>14</sup> See Amended Submission at 1. The submission does not state when MV hired Cornelsen. See *id.*

<sup>15</sup> *Id.* at 3. Counsel for MV has informed us that MV reported Cornelsen to the U.S. Department of Justice ("DOJ") for potential embezzlement and other state violations unrelated to the federal violations addressed in this matter. See Memorandum to File (Jan. 29, 2015). As of the date of this report, it does not appear that Cornelsen has been charged, and this Office has not had any contact with DOJ concerning this matter.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

2011 and 2013, MV had reimbursed Pate for six federal political contributions totaling \$43,100.<sup>18</sup>

According to MV, Pate believed that as CEO, he had the authority to make all six federal contributions, and did not seek or obtain approval from the Board or any other MV executive before making them.<sup>19</sup> Further, MV asserts that until the internal investigation, the Board did not know that MV had reimbursed Pate with corporate funds for federal contributions.<sup>20</sup> MV's bonus policy, which MV provided to the Commission, requires that any bonus for executive officers "be in writing in employment agreements," and approved by the Board's Compensation Committee.<sup>21</sup> Nevertheless, MV states that the Board did not approve Pate's bonuses as required under the policy because the reimbursements were not presented to them for approval — no Board members other than Pate and Cornelsen knew that corporate reimbursement for federal contributions had taken place.<sup>22</sup> Based on the submission and MV's internal investigation, it appears that Pate did not submit the reimbursements to the Board because he thought that contribution reimbursements did not require Board approval.<sup>23</sup> Cornelsen's Response, however,

---

<sup>18</sup> *Id.*

<sup>19</sup> MV Supp. Submission at 2-5 (May 13, 2015).

<sup>20</sup> Amended Submission at 2; MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>21</sup> MV Supp. Submission at 6, Ex. D, MVT-FEC000047 (May 13, 2015).

<sup>22</sup> MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>23</sup> MV's internal investigation indicates that Pate thought that MV had a policy on political contributions, but claimed that there was nothing in his employment contract concerning such contributions. *See* Pate MOI at 4. According to Pate, after a month or two of employment, Monson told Pate that Pate needed to write a check for a supporter of MV in California, but Pate told Monson he did not have the money, and "Carter [sic] said 'we'll reimburse you.'" *Id.* According to Pate, Monson told him to call Cornelsen, who would explain how to get reimbursed. *Id.* Cornelsen informed Pate that the reimbursement procedure was to "write the check, make a copy, email it, and make sure it is documented." *Id.* Pate stated that Monson confirmed that his first contribution reimbursement was correct, and Pate "never gave political contributions a second thought" until MV's General Counsel came into his office "some time ago" and told him there are criminal and civil penalties for political contributions. *Id.* at 14. Pate stated that he received requests to contribute to candidates from MV's Business Development Department and others, and he believed he had authority to do so based on his earlier conversations with Monson. *Id.* at 4-5. Monson, however, did not address this specific conversation in his interview, and MV maintains that Monson was not involved in the reimbursement or approval process for Pate's contributions. *See*

1 states that Pate told him that MV's General Counsel and the Board "agreed these contributions  
2 were to be reimbursed to him on a tax 'gross-up' basis."<sup>24</sup> Although documents MV provided  
3 suggest that it was the CFO's responsibility to enforce MV's executive compensation policy,<sup>25</sup> it  
4 appears that Cornelsen never confirmed that the Board had approved the requested  
5 reimbursements.<sup>26</sup>

6 Pate states that he did not learn that corporate reimbursement for federal contributions  
7 was improper until an external law firm identified the contributions as an issue.<sup>27</sup> Likewise,  
8 Cornelsen asserts that he "is not familiar with the Federal Election Campaign Act regulations and  
9 relied implicitly on Pate's prior experience as former [John McCain 2008's] Virginia State  
10 Finance Chair."<sup>28</sup>

---

Memorandum of Investigation, May 15, 2014 Interview of Jon Monson (attached to MV Supp. Submission (March 2, 2015)) ("Monson MOI"); MV Supp. Submission at 2 (Oct. 9, 2015). In his interview, Monson recalled a "general conversation with [Pate] at some point about controls of political contributions because a number of people were making them again, which was a problem because some jurisdictions had contribution limits." Monson MOI at 5. Monson further asserted that he believed that MV's policy was that the CEO had to approve all contributions, and the company did not reimburse political contributions unless the company was entitled to make the contributions itself. *Id.* at 4-5. Monson stated that he "did not know about" federal contributions, but also that he could "count on one hand the number of times the company has made federal contributions." *Id.* at 5.

<sup>24</sup> Cornelsen Resp. at 1.

<sup>25</sup> See MV Supp. Submission at 6, Ex. E, MVT-FEC000048-49 (May 13, 2015) (memorandum to Cornelsen dated July 28, 2013, reinforcing MV's policy that Cornelsen should obtain the Board's approval of executive bonus payments through the Board's Secretary). Cornelsen himself states that his processing of reimbursement requests included "review of the expenditure's approval in accordance with the MV signing authority/approval matrix." Cornelsen Resp. at 1.

<sup>26</sup> See *id.* (asserting that Cornelsen "followed Pate's strict instructions relative to his assertion of the contributions prior approval . . . in accordance with the MV [Transportation] signing authority/approval matrix").

<sup>27</sup> Pate Statement ¶ 2; see also Amended Submission at 2.

<sup>28</sup> Cornelsen Resp. at 1.

**C. MV's Reimbursement of Federal Political Contributions**

**1. RickPerry.org Contribution**

On August 24, 2011, Pate made a \$5,000 contribution to RickPerry.org using a check from his personal account.<sup>29</sup> Based on the Commission's disclosure records, Pate held this account jointly with his wife Angela, and half of the contribution was reattributed to her.<sup>30</sup> As noted above, according to MV's submission, Pate believed that as CEO, he had the authority to make the contributions, and did not seek or obtain approval from the Board or any other MV executive before making the RickPerry.org contribution.<sup>31</sup> It appears, however, that Monson, MV's then-Chairman of the Board, Kevin Klicka, MV's then-Chief Operating Officer ("COO"), and David Smith, MV's then-Vice President of Business Development, knew of the contribution. Specifically, it appears that Monson, with Klicka's assistance, sent Smith to represent MV at an October 4, 2011, RickPerry.org fundraising event using Pate's contribution as the ticket fee.<sup>32</sup>

<sup>29</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000009 (May 13, 2015); Pate Statement ¶ 6.

<sup>30</sup> See RickPerry.org Amended 2011 Oct. Quarterly Rpt. at 2,286 (Nov. 4, 2011) (reporting reattribution of \$2,500 of Robert Pate's \$5,000 contribution to Angela Pate on August 29, 2011).

<sup>31</sup> MV Transportation Supp. Submission at 2-5 (May 13, 2015).

<sup>32</sup> *Id.* at Ex. A, MVT-FEC000005-07. On September 19, 2011, in response to an email invitation to a Perry fundraising event by Jay Adair, Monson stated, "Carter [Pate] has maxed out his contributions to Perry but we want to support you and your fundraiser. We will send David Smith, our VP of Business Development, to your function. I want to thank you for your past efforts to support MV and we are pleased to support your efforts on behalf of Gov. Perry." *Id.* at Ex. A, MVT-FEC000006. Smith then contacted Klicka to ask whether he needed to bring a check to the event. *Id.* Klicka instructed Smith to fill out the fundraising event form but "Carter [Pate] says everything else is ok and you shouldn't have to bring a check." *Id.* at Ex. A, MVT-FEC000005. Klicka then forwarded the completed form to Pate, asking "does this work?" *Id.* It appears that Smith was able to forgo the \$1,000 ticket price by stating that he was attending on behalf of Pate, who had given the "maximum contribution." See *id.* at Ex. A, MVT-FEC000003. Neither Pate nor Smith signed the form, which included a statement that corporate contributions and contributions by federal contractors are prohibited. *Id.* During MV's internal investigation, Pate stated that he did not remember a specific conversation with Monson about the RickPerry.org contribution, and denied ever seeing the form or a similar one. See Pate MOI at 10. Klicka denied having any knowledge that Pate was reimbursed. See Klicka MOI at 5.

On November 15, 2011, Pate sent an email to his then-assistant, Jo Cobb, asking that she provide a copy of the check to Cornelsen for reimbursement.<sup>33</sup> Pate sent a copy of this email to Cornelsen.<sup>34</sup> MV states that the documentation regarding the reimbursement cannot be located in its payroll records, and Pate states that he does not recall specific correspondence from Cornelsen approving and authorizing the reimbursement.<sup>35</sup> Nevertheless, MV asserts that it reimbursed Pate for the contribution.<sup>36</sup>

## 2. Mica for Congress Contribution

On December 5, 2011, Pate made a \$5,000 contribution to Mica for Congress using a check from his personal checking "special account."<sup>37</sup> Pate did not write the check, but instead signed it in advance and had his assistant "release" it.<sup>38</sup> Pate made this contribution in connection with his attendance at a Mica for Congress fundraising breakfast on December 8, 2011.<sup>39</sup>

On December 16, 2011, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$8,925.<sup>40</sup> MV states that this represented a net payment of \$7,000 to Pate, \$5,000 of which constituted a reimbursement for Pate's contribution.<sup>41</sup>

<sup>33</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000008 (May 13, 2015); Pate Statement ¶ 6.

<sup>34</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000008 (May 13, 2015).

<sup>35</sup> *Id.* at 2; Pate Statement ¶ 6.

<sup>36</sup> MV Supp. Submission at 2 (May 13, 2015).

<sup>37</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000001 (May 13, 2015); Pate Statement ¶ 7; Mica for Congress Amended 2011 Year-End Rpt. at 30-31 (May 5, 2012) (reporting receipt of two \$2,500 contributions on December 19, 2011).

<sup>38</sup> Pate MOI at 10.

<sup>39</sup> MV Supp. Submission at 2-3 (May 13, 2015); Pate MOI at 9. During MV's internal investigation, Pate asserted that he had never seen the brochure for the breakfast, which stated that corporate contributions were prohibited. MV Supp. Submission at Ex. A, MVT-FEC000002 (May 13, 2015); Pate MOI at 9-10.

<sup>40</sup> MV Supp. Submission at 3 (May 13, 2015). Pate states that he does not recall specific correspondence seeking reimbursement for this contribution, but "based on standard practice," believes that his secretary "provided the particulars of the contribution to the CFO, who approved and authorized reimbursement." Pate Statement ¶ 7.



1                   **3. Pete Sessions for Congress Contributions**

2           On April 24, 2012, Pate made a \$5,000 contribution to Pete Sessions for Congress using  
3   two \$2,500 checks from his personal checking "special account."<sup>42</sup> Additionally, on September  
4   27, 2013, Pate asserts that he made a \$2,600 contribution to Pete Sessions for Congress.<sup>43</sup> The  
5   Commission's disclosure records, however, indicate that Pete Sessions for Congress attributed  
6   \$1,300 of this contribution to Pate and \$1,300 to his wife.<sup>44</sup> Pate recalled that he had previously  
7   reached out to Representative Sessions concerning MV, and Sessions later contacted him asking  
8   for support of his re-election campaign.<sup>45</sup> Pate further stated that he wanted to give his support  
9   as a "business decision," and Cornelsen would have known about the contributions.<sup>46</sup>

10           On April 24, 2012, Pate's then-assistant Francesca Flemming sent an email to Cornelsen  
11   requesting reimbursement for the first two \$2,500 contributions.<sup>47</sup> On April 27, 2012, MV made  
12   a bonus payment to Pate via ACH electronic transfer in the gross amount of \$6,078.<sup>48</sup> MV states  
13   that this amount represented a net payment to Pate of \$5,000.<sup>49</sup> On September 27, 2013, Pate  
14   requested reimbursement for the third \$2,600 contribution.<sup>50</sup> On the same day, MV made a

---

<sup>41</sup> MV Supp. Submission at 3 (May 13, 2015).

<sup>42</sup> MV Supp. Submission at 3, Ex. A, MVT-FEC000011 (May 13, 2015); Pate Statement ¶ 8; Pete Sessions for Congress 2012 Pre-Primary Rpt. at 9 (May 16, 2012) (reporting receipt of two \$2,500 contributions on May 5, 2012).

<sup>43</sup> MV Supp. Submission at 4-5 (May 13, 2015); Pate Statement ¶ 8.

<sup>44</sup> See Pete Sessions for Congress 2013 Oct. Quarterly Rpt. at 56-57 (Oct. 15, 2013). MV did not provide a copy of this check, but did provide a copy of the check ledger for the contribution. MV Supp. Submission at 3, Ex. A, MVT-FEC000017 (May 13, 2015). The ledger has a hand-written "reimbursed" notation. *Id.*

<sup>45</sup> Pate MOI at 10.

<sup>46</sup> *Id.*

<sup>47</sup> MV Supp. Submission at 3, Ex. A, MVT-FEC000010 (May 13, 2015); Pate Statement ¶ 8.

<sup>48</sup> MV Supp. Submission at 3 (May 13, 2015).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 5, Ex. A, MVT-FEC000018-19; Pate Statement ¶ 8. On September 26, 2013, Cornelsen requested that Payroll "gross up a check based on a net amount of \$2,600" that day. MV Supp. Submission at Ex. A, MVT-

1 bonus payment to Pate via "manual check," which it states represented a net payment of  
2 \$2,600.<sup>51</sup>

3 **4. Cantor for Congress Contribution**

4 On June 20, 2012, Pate made a \$500 contribution to Cantor for Congress using a check  
5 from his personal checking "special account."<sup>52</sup>

6 On June 25, 2012, Flemming sent an email to Cornelsen asking for reimbursement of the  
7 contribution.<sup>53</sup> On the same day, Cornelsen sent an email to an individual who worked in Payroll  
8 approving Pate's request.<sup>54</sup> On June 29, 2012, MV made a bonus payment to Pate via ACH  
9 electronic transfer in the gross amount of \$38,969.<sup>55</sup> MV states that this bonus included a  
10 \$507.35 "grossed up" reimbursement of the \$500 contribution.<sup>56</sup>

FEC000019 (May 13, 2015). An individual from Payroll replied that grossed-up checks had to be "manual checks" in order to ensure the accuracy of taxes, and that she would contact Pate's assistant to have the check printed and delivered to Pate. *Id.* at Ex. A, MVT-FEC000018. Cornelsen then asked, "Did bonus go out as well?" to which Payroll stated "Yes the bonus went out as direct deposit." *Id.* Although MV originally informed the Commission that Pate was reimbursed via ACH electronic transfer like the other reimbursements, it now states that, upon further review, Pate's payroll records "reflect that he received a bonus via direct deposit to which he was entitled under his employment contract on or about the same day that he was reimbursed for the \$2,600 contribution to Congressman Sessions via manual check." See MV Supp. Submission at 2 (Oct. 9, 2015). Pate states that he does not recall specific correspondence from Cornelsen, but believes that Cornelsen approved reimbursement. Pate Statement ¶ 8.

<sup>51</sup> MV Supp. Submission at 5 (May 13, 2015); MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>52</sup> MV Supp. Submission at 3, Ex. A, MVT-FEC000014 (May 13, 2015); Pate Statement ¶ 9; Cantor for Congress 2012 Oct. Quarterly Rpt. at 95 (Oct. 15, 2012) (reporting receipt of \$500 contribution on July 13, 2012).

<sup>53</sup> MV Supp. Submission at 4, Ex. A, MVT-FEC000012 (May 13, 2015); Pate Statement ¶ 9.

<sup>54</sup> *Id.* Handwriting on the email states that a "gross \$507.35" equals a "net \$500." MV Supp. Submission at Ex. A, MVT-FEC000012 (May 13, 2015).

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *Id.*

1                   **5. Romney Victory Contribution**

2           On September 10, 2012, Pate made a \$25,000 contribution to Romney Victory, Inc., a  
3 joint fundraising committee.<sup>57</sup> MV states that contribution was made in connection with Pate's  
4 attendance at a Romney campaign event.<sup>58</sup>

5           On August 31, 2012, Flemming sent an email to Cornelsen requesting advance payment  
6 to Pate for the contribution.<sup>59</sup> On September 4, 2012, Cornelsen sent an email requesting that  
7 Payroll "gross up 25k to Carter Pate today."<sup>60</sup> On September 5, 2012, MV made a bonus  
8 payment to Pate via ACH electronic transfer in the gross amount of \$36,977.<sup>61</sup> MV states that  
9 this amount represented a net payment of \$25,000 to Pate.<sup>62</sup>

10           **III. LEGAL ANALYSIS**

11           **A. There is Reason to Believe that MV and Pate Knowingly and Willfully**  
12           **Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by Making**  
13           **Contributions in the Name of Another and Using Pate's Name to Effect the**  
14           **Contributions**

15           The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a person  
16 from making a contribution in the name of another or knowingly permitting his or her name to be

<sup>57</sup> MV Supp. Submission at 4 (May 13, 2015); Pate Statement ¶ 10; Romney Victory, Inc. Amended 2012 Oct. Quarterly Rpt. at 25,211 (June 15, 2013) (reporting receipt of \$25,000 contribution on September 24, 2012). MV did not provide a copy of this check, but did provide a copy of the check ledger for the contribution. MV Supp. Submission at 3, Ex. A, MVT-FEC000022 (May 13, 2015). The ledger has a hand-written "reimbursed" notation. *Id.*

<sup>58</sup> *Id.* at 4. During MV's internal investigation, Pate stated that he wanted access to certain state transportation secretaries who were attending the event, but could not recall who initially suggested his attendance and did not discuss his attendance with anyone at the company prior to attending the event. Pate MOI at 11. However, emails included in the submission suggest that he discussed the event with Flemming and Cornelsen. Within 15 minutes of Flemming's request to Cornelsen for advance reimbursement of the \$25,000 contribution, Pate responded to clarify that Flemming had meant "secretaries of transportation" when she had written that there would be three secretaries of state attending. MV Transportation Supp. Submission at Ex. A, MVT-FEC000023 (May 13, 2015).

<sup>59</sup> *Id.* at 4, Ex. A, MVT-FEC000020-21; Pate Statement ¶ 10.

<sup>60</sup> MV Supp. Submission at Ex. A, MVT-FEC000020 (May 13, 2015).

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.*

1 used to effect such a contribution.<sup>63</sup> The term “person” for purposes of the Act and Commission  
2 regulations includes corporations.<sup>64</sup>

3 Principals are liable vicariously for the acts of their agents committed within the scope of  
4 agency.<sup>65</sup> The record indicates that Pate believed that he had authority to make federal political  
5 contributions as MV’s CEO, and made the contributions as “business decisions” to benefit the  
6 company.<sup>66</sup> Moreover, Cornelsen, as CFO, and other agents of MV approved and issued the  
7 reimbursements to Pate. Accordingly, based on Pate’s and other MV officers’ statements and  
8 actions, there is reason to believe that MV made contributions in the name of another in violation  
9 of section 30122. Additionally, because Pate knowingly permitted his name to be used to effect  
10 the corporate contributions, there also is reason to believe that Pate violated section 30122 in his  
11 personal capacity.<sup>67</sup>

12 Principals also can be held vicariously liable for the knowing and willful acts of their  
13 agents, even if those agents conceal their acts from the principal.<sup>68</sup> Here, the facts indicate that

---

<sup>63</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(ii).

<sup>64</sup> See 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

<sup>65</sup> See RESTATEMENT (THIRD) OF AGENCY § 7.07; *United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against corporation in connection with a contribution reimbursement scheme where officer hid scheme from others in corporation but acted to benefit the corporation); see, e.g., Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*); Factual & Legal Analysis at 4-5, MUR 6143 (Galen Capital Group, *et al.*).

<sup>66</sup> See MV Supp. Submission at 2-5, Ex. A (May 13, 2015); Pate Statement ¶ 2; Pate MOI at 4-11.

<sup>67</sup> Although it appears that Pate partially attributed two of the contributions to his wife, there is no evidence in the record that she had knowledge that the contributions were reimbursed by MV or was otherwise involved in the reimbursement scheme. In past cases, the Commission has declined to pursue similar family member conduits. See, e.g., MUR 6143 (Galen Capital Group, *et al.*). Accordingly, we are not recommending that the Commission take any action as to Angela Pate.

<sup>68</sup> See Factual & Legal Analysis at 19, MUR 6922 (ACPAC, *et al.*) (noting that certain facts, including the agent’s attempts to conceal the violations and “avoid a known legal duty” within the scope of his responsibility, “suggest[ed] a sufficient basis to support a knowing and willful violation” against the principal based on the actions of the agent); Factual & Legal Analysis at 8, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (noting that the knowing and willful actions of three officers could be imputed to the union even though the reimbursements were not approved by the full executive board). In those cases, the Commission ultimately exercised its discretion and did not pursue knowing and willful findings for all of the activity in question. In MUR 6922, the Commission

1 Pate, and by extension, MV, acted knowingly and willfully, despite Pate's assertion that he "did  
2 not know that corporate reimbursement for federal political contributions was improper."<sup>69</sup> A  
3 violation of the Act is knowing and willful if the "acts were committed with full knowledge of  
4 all the relevant facts and a recognition that the action is prohibited by law."<sup>70</sup> This does not  
5 require proving knowledge of the specific statute or regulations that the respondent allegedly  
6 violated.<sup>71</sup> Instead, it is sufficient that the respondent "acted voluntarily and was aware that his  
7 conduct was unlawful."<sup>72</sup> This may be shown by circumstantial evidence from which the  
8 respondents' unlawful intent reasonably may be inferred.<sup>73</sup>

9 One example of such circumstantial evidence is "the [person's] elaborate scheme for  
10 disguising their political contributions."<sup>74</sup> Here, although the submission claims that the  
11 reimbursements "were always transparent within the records of the company, and neither MV

---

did not pursue knowing and willful findings against the two principals because the agent affirmatively sought to conceal the scheme from senior management, including the treasurer. In MUR 6515, the Commission did not pursue knowing and willful findings against the union for \$1,375 in reimbursements because those reimbursements lacked the planning and full Board knowledge of the larger scheme for which the Commission did make knowing and willful findings against the union. We do not, however, recommend that the Commission exercise its discretion in MV's case. Unlike the agent in MUR 6922, Pate was a senior executive officer and involved MV's treasurer and several other subordinate employees in his scheme. And unlike the secondary scheme in MUR 6515, Pate's requests for reimbursements were part of one, ongoing, principal scheme. Further, the amount in violation here, \$43,100, is much greater than the \$1,375 at issue in MUR 6515.

<sup>69</sup> See Pate Statement ¶ 2.

<sup>70</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>71</sup> *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>72</sup> *Id.*

<sup>73</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>74</sup> *Id.* at 214-15; see also Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*). As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Hopkins*, 916 F.2d at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 nor Pate took any efforts to hide or disguise the federal contributions,"<sup>75</sup> the records included in  
2 the submission suggest otherwise. The reimbursements appear to have been coded as bonuses  
3 rather than reimbursed business expenses even though MV had a "Donations – Political"  
4 category for reimbursement in its approval matrix,<sup>76</sup> and the reimbursed amounts often were  
5 included within larger payments to Pate.<sup>77</sup> In addition, based on MV's assertions, its CEO failed  
6 to inform the Board of the reimbursements despite the Board's clear policy that the  
7 Compensation Committee approve any executive bonuses.<sup>78</sup> Further, based on Cornelsen's  
8 Response, it appears that Pate falsely advised him that MV's General Counsel and Board had  
9 agreed that the contributions were to be reimbursed on a tax gross-up basis.<sup>79</sup> Thus, Pate's  
10 requests for reimbursements may have been known to certain employees within MV (all of  
11 whom appear to have been his subordinates), but Pate's actions were not "transparent."

12 There are other aggravating factors present here that the Commission has relied on when  
13 making a knowing and willful finding against a *sua sponte* respondent. They include: the  
14 involvement of a company's most senior officers in the reimbursement scheme; likely  
15 knowledge of the Act's prohibitions and limitations; and ongoing patterns of conduct repeated  
16 over an extended period of time.<sup>80</sup> Here, although MV and Pate have been cooperative

<sup>75</sup> Amended Submission at 3; *see also* Pate Statement ¶ 4.

<sup>76</sup> Cornelsen Resp., Attach. (providing an approval matrix that requires Board approval of all executive bonus payments and approval by the General Counsel and CEO of "Donations – Political").

<sup>77</sup> *See* MV Supp. Submission at 2-5, Ex. A (May 13, 2015).

<sup>78</sup> *See id.* at 6, Ex. D; MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>79</sup> Cornelsen Resp. at 1.

<sup>80</sup> *See* Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,697 (Apr. 7, 2007) ("*Sua Sponte* Policy"); *see, e.g.*, Factual & Legal Analysis at 7, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where officers submitted false expense forms to receive reimbursements for political contributions); Factual & Legal Analysis at 6, MUR 6143 (Galen Capital Group, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where CEO and other conduits signed donor cards containing warnings against reimbursed contributions and where CEO attempted to conceal true purpose of reimbursement checks).

1 throughout the *sua sponte* process, Pate and Cornelsen were both senior officers and engaged in  
2 the conduct at issue for more than two years, in apparent contradiction of MV's own policies and  
3 procedures.<sup>81</sup> It does not appear that Pate, Cornelsen, or any other high-level MV officer  
4 performed any due diligence or legal review concerning these reimbursements despite  
5 procedures in place to do so. The record also shows that Pate had significant experience with  
6 federal political fundraising and made federal contributions, which strongly suggests that he was  
7 aware of the Act's basic prohibitions and limitations.<sup>82</sup> According to Commission records, Pate  
8 has contributed over \$100,000 to federal candidates and political committees since 1999.<sup>83</sup> In  
9 addition, based on MV's internal investigation, Pate was familiar with and concerned about  
10 violating local and state campaign finance and ethics rules, including "pay-to-play" laws.<sup>84</sup>  
11 With this level of experience and knowledge, Pate also would likely have been familiar with the  
12 federal prohibitions against contributions in the name of another and contributions by  
13 corporations and federal contractors.

<sup>81</sup> See MV Supp. Submission at 6, Ex. D (May 13, 2015) (providing MV's reimbursement and bonus approval policies); Cornelsen Resp., Attach. (providing an approval matrix that requires Board approval of all executive bonus payments and approval by the General Counsel and CEO of "Donations – Political"); Klicka MOI at 2-3, 7 (noting Klicka's belief that reimbursement requests for political contributions should have been processed through MV's "Quask" accounting system and gone through legal review, but "[s]ome must have gotten done without going through [Q]uask" and "there is obviously a lack of controls").

<sup>82</sup> See *supra* note 13.

<sup>83</sup> See <http://www.fec.gov/finance/disclosure/norindsea.shtml> (search results for "Carter Pate") (last accessed Oct. 29, 2015).

<sup>84</sup> See Pate MOI at 4-5 (noting that Pate was "focused on local rules and procurement and making sure there was no pay-for-play"); *id.* at 8 (noting Pate's belief that MV's legal department was "constantly confirming they are not in violation of local regulations"); *id.* at 13 (noting that Pate was concerned about MV getting "challenged for pay-to-play" regarding a contribution to a Texas gubernatorial candidate); *id.* at 14 (noting that Pate "looked into" the corporate contribution rules in Georgia); Wiley MOI at 5 (noting that Pate "was always careful to keep his nose clean" and that PricewaterhouseCooper's government affairs office regularly communicated with all the partners and staff "about 'the do's and don'ts [sic]' of handling political contributions").

1 reimbursements — which might suggest that he aided Pate in concealing the transactions —  
2 given the specific circumstances of this case, we are not recommending that the Commission  
3 proceed on a knowing and willful basis against him. Cornelsen asserts that Pate advised him that  
4 MV's General Counsel and Board had approved the bonuses.<sup>91</sup> Moreover, unlike Pate, there is  
5 no evidence in the record to suggest that Cornelsen had any past experience with federal political  
6 fundraising and contributions.<sup>92</sup>

7 **C. The Commission Should Decline to Take Action as to the Other MV**  
8 **Employees and Officers**

9 Although several other individuals aided in reimbursing Pate, including his executive  
10 assistants and several Payroll Department employees, there is no evidence in the record that  
11 those individuals acted outside the scope of the normal subordinate-and-superior relationship, or  
12 knew that reimbursing federal political contributions was illegal. The Commission does not  
13 typically pursue individuals who engaged in conduct solely in their capacity as subordinate  
14 employees.<sup>93</sup> Accordingly, we are not recommending that the Commission take any action as to  
15 these individuals.

16 Further, we are not recommending that the Commission make findings against any  
17 additional current or former Board members, including Monson. Although Pate purportedly told  
18 Cornelsen that MV's Board and General Counsel had approved the reimbursements, and MV had  
19 a written policy that required Board approval of executive bonuses, there is no evidence in the

---

<sup>91</sup> Cornelsen Resp. at 1.

<sup>92</sup> According to Commission records, it does not appear that Cornelsen has made any reportable federal contributions.

<sup>93</sup> See, e.g., MUR 6143 (Galen Capital Group, *et al.*).



**B. There is Reason to Believe that Cornelsen Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(iii) by Knowingly Helping and Assisting Pate Make Contributions in the Name of Another**

As noted above, the Act provides that no person shall make a contribution in the name of another person.<sup>85</sup> That prohibition extends to knowingly helping or assisting any person in making a contribution in the name of another.<sup>86</sup> The Commission has explained that “knowingly helping or assisting” a false-name contribution would reach the conduct of “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another.”<sup>87</sup>

Here, by processing and approving Pate’s reimbursement requests, Cornelsen caused MV to make contributions in Pate’s name, and therefore played a significant and integral role in Pate’s scheme.<sup>88</sup> Although Cornelsen asserts that he did not have authority to approve reimbursements,<sup>89</sup> the record suggests otherwise. For each reimbursement, Pate’s secretary would send a copy of the contribution check to Cornelsen, who would then direct an individual in the Payroll department to “gross up” the appropriate amount to Pate, including an instance in which he marked the reimbursement “approved.”<sup>90</sup> Based on this information, there is reason to believe that Cornelsen also violated section 30122.

Although Cornelsen was a senior officer, appears to have knowingly processed the reimbursements as bonuses, and failed to confirm whether the Board had approved the

---

<sup>85</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

<sup>86</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iii).

<sup>87</sup> Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

<sup>88</sup> *Cf., e.g.,* Factual & Legal Analysis at 7, MUR 5948 (Critical Health Systems, Inc., *et al.*) (finding reason to believe that respondent knowingly helped and assisted in the making of contributions in the name of another by handling and processing payments to conduits).

<sup>89</sup> See Cornelsen Resp. at 1.

<sup>90</sup> See MV Supp. Submission, Ex. A (May 13, 2015).

1 record that this actually occurred.<sup>94</sup> MV's internal investigation, which it provided to the  
2 Commission, also contains conflicting information concerning whether Monson ever instructed  
3 Pate to request reimbursement for political contributions.<sup>95</sup> In light of this conflicting evidence,  
4 Monson's role in the reimbursement scheme is unclear, but we do not believe that opening an  
5 investigation to determine Monson's level of involvement would be an efficient use of  
6 Commission resources at this time given the approaching statute of limitations. Rather, we  
7 believe that the Commission's interests will be adequately vindicated by conciliating with MV,  
8 Pate, and Cornelsen, the three known principal players in Pate's scheme.

9 **D. There is Reason to Believe that MV and Pate Knowingly and Willfully Violated**  
10 **52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) and (e) and Cornelsen Violated 52**  
11 **U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by Making and Consenting to**  
12 **Corporate Contributions**

13 The Act prohibits corporations from making contributions to a federal political  
14 committee other than independent expenditure-only political committees, and further prohibits  
15 any officer of a corporation from consenting to any such contribution by the corporation.<sup>96</sup> Here,  
16 because the named respondents consented to making prohibited corporate contributions to  
17 candidate committees, there is reason to believe that they also violated section 30118(a).

<sup>94</sup> See Amended Submission at 2 ("Until [the internal investigation], the MV Board of Directors did not know that corporate reimbursement for federal contributions had taken place."); Pate Statement ¶2 ("Contributions were centralized such that the CEO has the authority to . . . seek and receive reimbursement from MV for that expense."); MV Supp. Submission at 2 (Oct. 9, 2015) ("Other than Mr. Cornelsen and Mr. Pate, no one including board members were aware that the corporate reimbursement for federal contributions had taken place until the internal investigation.").

<sup>95</sup> Compare Pate MOI at 4 (discussing Pate's recollection about a specific conversation with Monson concerning his ability to reimburse his political contributions), with Monson MOI at 5 (discussing Monson's belief that MV did not reimburse contributions unless it was entitled to make the contribution itself) and MV Supp. Submission at 2 (Oct. 9, 2015) (asserting that Monson was not involved in the reimbursement process for Pate's contributions and Monson "had a policy that no federal contributions would be reimbursed" when he served as MV's CEO).

<sup>96</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (e).

1           Additionally, for many of the same reasons discussed above, MV and Pate appear to have  
2           knowingly and willfully violated section 30118(a). Specifically, the record strongly suggests  
3           that Pate attempted to conceal the conduct and had knowledge of the basic prohibitions and  
4           limitations of the Act, including the prohibition against corporate contributions.

5           **E. There is Reason to Believe that MV Knowingly and Willfully Violated 52 U.S.C.**  
6           **§ 30119(a) and 11 C.F.R. § 115.2 by Making Contributions as a Federal**  
7           **Contractor**

8           The Act prohibits any person who is negotiating or performing a contract with the United  
9           States government or any of its agencies or departments from making a contribution to any  
10          political party, political committee, federal candidate, or "any person for any political purpose or  
11          use."<sup>97</sup> Here, government records indicate that MV was a federal contractor pursuant to  
12          Commission regulations at the time Pate made the six contributions.<sup>98</sup> Accordingly, there is  
13          reason to believe that MV violated section 30119(a).

14          Again, for the reasons discussed above, MV appears to have knowingly and willfully  
15          violated section 30119(a). The record strongly suggests that Pate attempted to conceal the  
16          conduct and had knowledge of the basic prohibitions and limitations of the Act, including "pay-  
17          to-play" rules and the federal contractor prohibition.

18           **F. The Evidence Does Not Indicate that Committees Knowingly Accepted**  
19           **Corporate Contributions Made in the Name of Another**

20          Although it appears that MV knowingly and willfully violated sections 30122, 30118(a),  
21          and 30119(a), the record does not provide any evidence that the recipient committees knowingly

<sup>97</sup> 52 U.S.C. § 30119(a); 11 C.F.R. §§ 115.1, 115.2.

<sup>98</sup> See e.g., <https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=A0B4180D-683C-1D5C-4E62-0D6F255C9975&AwardID=7274808&AwardType=C> (listing a federal contract effective from September 1, 2011, to August 31, 2012); <https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=BA44EFBC-E579-9DDA-0820-1B3E2B7483C9&AwardID=7274808&AwardType=C> (listing a federal contract effective from September 1, 2012, to August 31, 2013).

1 accepted such contributions. In fact, in at least two instances, it appears that the committees  
2 provided notice that corporate contributions were prohibited.<sup>99</sup> Therefore, we make no  
3 recommendation as to them, but recommend that MV advise each campaign of the contributions  
4 made with corporate funds, waive its right to a refund, and request that the Committees disgorge  
5 the illegal contributions as part of the conciliation agreement, consistent with the Commission's  
6 practice in similar matters.<sup>100</sup>

<sup>99</sup> See MV Supp. Submission at Ex. A, MVT-FEC000002, MVT-FEC000005-07 (May 13, 2015).

<sup>100</sup> See, e.g., Conciliation Agreement ¶ VII.3, MUR 6515 (Professional Fire Fighters of Wisconsin); Conciliation Agreement ¶ VI.4, MUR (United Power, Inc.); Conciliation Agreement ¶ VI.3, MUR 6516 (Mobley).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

UNCLASSIFIED

9

24-00000444-171

**V. RECOMMENDATIONS**

1. Open a Matter Under Review.
2. Find reason to believe that MV Transportation, Inc. knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i).
3. Find reason to believe that R. Carter Pate knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii).
4. Find reason to believe that Brad Cornelsen violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(iii).
5. Find reason to believe that MV Transportation, Inc. knowingly and willfully violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b).
6. Find reason to believe that R. Carter Pate knowingly and willfully violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e).
7. Find reason to believe that Brad Cornelsen violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e).
8. Find reason to believe that MV Transportation, Inc. knowingly and willfully violated 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2.
9. Approve the Factual and Legal Analyses.
10. Authorize pre-probable cause conciliation with MV Transportation, Inc., R. Carter Pate, and Brad Cornelsen.

<sup>109</sup> See *id.* (applying 100% of the amount in violation for non-knowing and willful violations); MUR 5405 (APEX, *et al.*) (same).

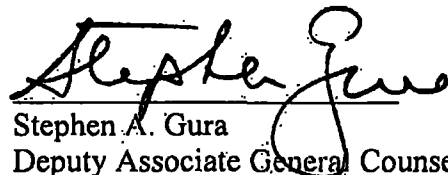
11. Approve the attached proposed conciliation agreements.

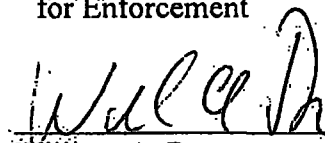
12. Approve the appropriate letters.

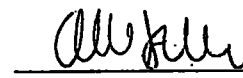
Kathleen M. Guith  
Acting Associate General Counsel  
for Enforcement

2.10.16

Date

  
Stephen A. Gura  
Deputy Associate General Counsel  
for Enforcement

  
William A. Powers  
Assistant General Counsel

  
Allison T. Steinle  
Attorney

Attachments:  
Factual and Legal Analyses



1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **MUR:**

6  
7 **RESPONDENT:** MV Transportation, Inc.  
8

9 **I. INTRODUCTION**

10 This matter was generated by a joint *sua sponte* submission by MV Transportation, Inc.  
11 (“MV”) and R. Carter Pate, MV’s former Chief Executive Officer (“CEO”). The submission  
12 notified the Commission that MV reimbursed Pate for six political contributions totaling \$43,100  
13 that Pate made to federal candidates and political committees between 2011 and 2013.  
14 For the reasons described below, the Commission finds reason to believe that MV knowingly  
15 and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) by making contributions  
16 in the name of another. Further, the Commission finds reason to believe that MV knowingly and  
17 willfully violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(b) by making prohibited corporate  
18 contributions and 52 U.S.C. § 30119(a) and 11 C.F.R. § 115.2(a) by making contributions as a  
19 federal contractor.

20 **II. FACTUAL BACKGROUND**

21 MV is a privately held corporation providing passenger transportation services  
22 throughout the United States.<sup>1</sup> Since 2008, MV has contracted with the U.S. Department of  
23 Veterans Affairs to provide ambulance services and special needs transportation.<sup>2</sup> At the time of  
24 the joint *sua sponte* submission, Jon Monson served as CEO and on the Board of Directors.<sup>3</sup>

<sup>1</sup> Amended Submission at 1-2.

<sup>2</sup> According to [www.usaspending.gov](http://www.usaspending.gov), MV Transportation, Inc. was awarded contracts with Veterans Affairs totaling \$611,712 in fiscal year 2011, \$840,000 in fiscal year 2012, and \$6,726,402 in fiscal year 2013. See <https://www.usaspending.gov/transparency/Pages/RecipientSearch.aspx?name=MV> (last accessed Oct. 29, 2015).

<sup>3</sup> See Amended Submission at 1.

1 Monson also served as CEO from 1999 through 2011.<sup>4</sup> MV has since informed the Commission,  
2 however, that he is no longer a director of MV.<sup>5</sup>

3 R. Carter Pate became CEO of MV in late 2011.<sup>6</sup> In that capacity, he also served on the  
4 Board of Directors.<sup>7</sup> Before that, Pate was the Global and U.S. Managing Partner for the Capital  
5 Projects, Infrastructure, and Government Practice at PricewaterhouseCoopers.<sup>8</sup> Pate retired as  
6 MV's CEO and Board member in September 2014.<sup>9</sup> As of September 2014, however, he  
7 continued to work with MV as a Strategic Advisor to the Board.<sup>10</sup> Throughout his career as an  
8 executive, it appears that Pate had significant experience with federal political campaigns and  
9 fundraising.<sup>11</sup>

10 Brad Cornelsen was CFO of MV.<sup>12</sup> According to the joint *sua sponte* submission, MV  
11 terminated Cornelsen's employment in April 2014 for reasons unrelated to the reimbursements at  
12 issue in this matter.<sup>13</sup>

13 During MV's internal analysis of executive compensation in April 2014, Pate "reported  
14 certain unusual executive bonus payments" to the MV Board.<sup>14</sup> The Board then retained a law

---

<sup>4</sup> *Id.*

<sup>5</sup> MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>6</sup> Amended Submission at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> See Memorandum of Investigation, May 30, 2014 Interview of Carter Pate at 2-3, 14 (attached to MV Supp. Submission (March 2, 2015)) ("Pate MOI") (noting that Pate made contributions at PricewaterhouseCoopers, "raised money for John McCain," and "knew how politicians raised money for access"); Memorandum of Investigation, June 2, 2014 Interview of Jennifer Wiley, Chief of Staff to Pate at 5 (attached to MV Supp. Submission (March 2, 2015)) ("Wiley MOI") (noting that Pate "has been actively involved in fundraising and politics for some time," including the McCain, Bush, and Romney campaigns); Memorandum of Investigation, May 22, 2014 Interview of Kevin Klicka at 5 (attached to MV Supp. Submission (March 2, 2015)) ("Klicka MOI") (discussing Pate's involvement in politics and fundraising).

<sup>12</sup> See Amended Submission at 1. The submission does not state when MV hired Cornelsen. See *id.*

<sup>13</sup> *Id.* at 3.

1 firm to conduct an internal investigation “regarding the executive bonus payments and other  
2 possible financial irregularities.”<sup>15</sup> Through this investigation, the Board learned that between  
3 2011 and 2013, MV had reimbursed Pate for six federal political contributions totaling  
4 \$43,100.<sup>16</sup>

5 According to MV, Pate believed that as CEO, he had the authority to make all six federal  
6 contributions, and did not seek or obtain approval from the Board or any other MV executive  
7 before making them.<sup>17</sup> Further, MV asserts that until the internal investigation, the Board did not  
8 know that MV had reimbursed Pate with corporate funds for federal contributions.<sup>18</sup> MV’s  
9 bonus policy, which MV provided to the Commission, requires that any bonus for executive  
10 officers “be in writing in employment agreements,” and approved by the Board’s Compensation  
11 Committee.<sup>19</sup> Nevertheless, MV states that the Board did not approve Pate’s bonuses as required  
12 under the policy because the reimbursements were not presented to them for approval — no  
13 Board members other than Pate and Cornelsen knew that corporate reimbursement for federal  
14 contributions had taken place.<sup>20</sup> Based on the submission and MV’s internal investigation, it  
15 appears that Pate did not submit the reimbursements to the Board because he thought that  
16 contribution reimbursements did not require Board approval.<sup>21</sup> The Commission possesses

---

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> MV Supp. Submission at 2-5 (May 13, 2015).

<sup>18</sup> Amended Submission at 2; MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>19</sup> MV Supp. Submission at 6, Ex. D, MVT-FEC000047 (May 13, 2015).

<sup>20</sup> MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>21</sup> MV’s internal investigation indicates that Pate thought that MV had a policy on political contributions, but claimed that there was nothing in his employment contract concerning such contributions. *See* Pate MOI at 4. According to Pate, after a month or two of employment, Monson told Pate that Pate needed to write a check for a supporter of MV in California, but Pate told Monson he did not have the money, and “Carter [sic] said ‘we’ll reimburse you.’” *Id.* According to Pate, Monson told him to call Cornelsen, who would explain how to get reimbursed. *Id.* Cornelsen informed Pate that the reimbursement procedure was to “write the check, make a copy,

1 information, however, suggesting that Pate told Cornelsen that MV's General Counsel and the  
2 Board agreed that the contributions were to be reimbursed to Pate on a tax 'gross-up' basis.  
3 Although documents MV provided suggest that it was the CFO's responsibility to enforce MV's  
4 executive compensation policy,<sup>22</sup> it appears that Cornelsen never confirmed that the Board had  
5 approved the requested reimbursements.

6 Pate has asserted that he did not understand that corporate reimbursement for federal  
7 contributions was improper until an external law firm identified the contributions as an issue.<sup>23</sup>

#### 8 A. RickPerry.org Contribution

9 On August 24, 2011, Pate made a \$5,000 contribution to RickPerry.org using a check  
10 from his personal account.<sup>24</sup> Based on the Commission's disclosure records, Pate held this  
11 account jointly with his wife Angela, and half of the contribution was reattributed to her.<sup>25</sup> As  
12 noted above, according to MV's submission, Pate believed that as CEO, he had the authority to  
13 make the contributions, and did not seek or obtain approval from the Board or any other MV

---

email it, and make sure it is documented." *Id.* Pate stated that Monson confirmed that his first contribution reimbursement was correct, and Pate "never gave political contributions a second thought" until MV's General Counsel came into his office "some time ago" and told him there are criminal and civil penalties for political contributions. *Id.* at 14. Pate stated that he received requests to contribute to candidates from MV's Business Development Department and others, and he believed he had authority to do so based on his earlier conversations with Monson. *Id.* at 4-5. Monson, however, did not address this specific conversation in his interview, and MV maintains that Monson was not involved in the reimbursement or approval process for Pate's contributions. See Memorandum of Investigation, May 15, 2014 Interview of Jon Monson (attached to MV Supp. Submission (March 2, 2015)) ("Monson MOI"); MV Supp. Submission at 2 (Oct. 9, 2015). In his interview, Monson recalled a "general conversation with [Pate] at some point about controls of political contributions because a number of people were making them again, which was a problem because some jurisdictions had contribution limits." Monson MOI at 5. Monson further asserted that he believed that MV's policy was that the CEO had to approve all contributions, and the company did not reimburse political contributions unless the company was entitled to make the contributions itself. *Id.* at 4-5. Monson stated that he "did not know about" federal contributions, but also that he could "count on one hand the number of times the company has made federal contributions." *Id.* at 5.

<sup>22</sup> See MV Supp. Submission at 6, Ex. E, MVT-FEC000048-49 (May 13, 2015) (memorandum to Cornelsen dated July 28, 2013, reinforcing MV's policy that Cornelsen should obtain the Board's approval of executive bonus payments through the Board's Secretary).

<sup>23</sup> See Amended Submission at 2.

<sup>24</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000009 (May 13, 2015).

<sup>25</sup> See RickPerry.org Amended 2011 Oct. Quarterly Rpt. at 2,286 (Nov. 4, 2011) (reporting reattribution of \$2,500 of Robert Pate's \$5,000 contribution to Angela Pate on August 29, 2011).

1 executive before making the RickPerry.org contribution.<sup>26</sup> It appears, however, that Monson,  
2 MV's then-Chairman of the Board, Kevin Klicka, MV's then-Chief Operating Officer ("COO"),  
3 and David Smith, MV's then-Vice President of Business Development, knew of the contribution.  
4 Specifically, it appears that Monson, with Klicka's assistance, sent Smith to represent MV at an  
5 October 4, 2011, RickPerry.org fundraising event using Pate's contribution as the ticket fee.<sup>27</sup>

6 On November 15, 2011, Pate sent an email to his then-assistant, Jo Cobb, asking that she  
7 provide a copy of the check to Cornelsen for reimbursement.<sup>28</sup> Pate sent a copy of this email to  
8 Cornelsen.<sup>29</sup> MV states that the documentation regarding the reimbursement cannot be located  
9 in its payroll records.<sup>30</sup> Nevertheless, MV asserts that it reimbursed Pate for the contribution.<sup>31</sup>

<sup>26</sup> MV Transportation Supp. Submission at 2-5 (May 13, 2015).

<sup>27</sup> *Id.* at Ex. A, MVT-FEC000005-07. On September 19, 2011, in response to an email invitation to a Perry fundraising event by Jay Adair, Monson stated, "Carter [Pate] has maxed out his contributions to Perry but we want to support you and your fundraiser. We will send David Smith, our VP of Business Development, to your function. I want to thank you for your past efforts to support MV and we are pleased to support your efforts on behalf of Gov. Perry." *Id.* at Ex. A, MVT-FEC000006. Smith then contacted Klicka to ask whether he needed to bring a check to the event. *Id.* Klicka instructed Smith to fill out the fundraising event form but "Carter [Pate] says everything else is ok and you shouldn't have to bring a check." *Id.* at Ex. A, MVT-FEC000005. Klicka then forwarded the completed form to Pate, asking "does this work?" *Id.* It appears that Smith was able to forgo the \$1,000 ticket price by stating that he was attending on behalf of Pate, who had given the "maximum contribution." *See id.* at Ex. A, MVT-FEC000003. Neither Pate nor Smith signed the form, which included a statement that corporate contributions and contributions by federal contractors are prohibited. *Id.* During MV's internal investigation, Pate stated that he did not remember a specific conversation with Monson about the RickPerry.org contribution, and denied ever seeing the form or a similar one. *See* Pate MOI at 10. Klicka denied having any knowledge that Pate was reimbursed. *See* Klicka MOI at 5.

<sup>28</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000008 (May 13, 2015).

<sup>29</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000008 (May 13, 2015).

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.*

**B. Mica for Congress Contribution**

On December 5, 2011, Pate made a \$5,000 contribution to Mica for Congress using a check from his personal checking "special account."<sup>32</sup> Pate made this contribution in connection with his attendance at a Mica for Congress fundraising breakfast on December 8, 2011.<sup>33</sup>

On December 16, 2011, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$8,925.<sup>34</sup> MV states that this represented a net payment of \$7,000 to Pate, \$5,000 of which constituted a reimbursement for Pate's contribution.<sup>35</sup>

**C. Pete Sessions for Congress Contributions**

On April 24, 2012, Pate made a \$5,000 contribution to Pete Sessions for Congress using two \$2,500 checks from his personal checking "special account."<sup>36</sup> Additionally, on September 27, 2013, Pate made a \$2,600 contribution to Pete Sessions for Congress.<sup>37</sup> The Commission's disclosure records, however, indicate that Pete Sessions for Congress attributed \$1,300 of this contribution to Pate and \$1,300 to his wife.<sup>38</sup> Pate recalled that he had previously reached out to Representative Sessions concerning MV, and Sessions later contacted him asking for support of

<sup>32</sup> MV Supp. Submission at 2, Ex. A, MVT-FEC000001 (May 13, 2015); Mica for Congress Amended 2011 Year-End Rpt. at 30-31 (May 5, 2012) (reporting receipt of two \$2,500 contributions on December 19, 2011).

<sup>33</sup> MV Supp. Submission at 2-3 (May 13, 2015). During MV's internal investigation, Pate asserted that he had never seen the brochure for the breakfast, which stated that corporate contributions were prohibited. MV Supp. Submission at Ex. A, MVT-FEC000002 (May 13, 2015); Pate MOI at 9-10.

<sup>34</sup> MV Supp. Submission at 3 (May 13, 2015).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 3, Ex. A, MVT-FEC000011; Pete Sessions for Congress 2012 Pre-Primary Rpt. at 9 (May 16, 2012) (reporting receipt of two \$2,500 contributions on May 5, 2012).

<sup>37</sup> MV Supp. Submission at 4-5 (May 13, 2015).

<sup>38</sup> See Pete Sessions for Congress 2013 Oct. Quarterly Rpt. at 56-57 (Oct. 15, 2013). MV did not provide a copy of this check, but did provide a copy of the check ledger for the contribution. MV Supp. Submission at 3, Ex. A, MVT-FEC000017 (May 13, 2015). The ledger has a hand-written "reimbursed" notation. *Id.*

1 his re-election campaign.<sup>39</sup> Pate further stated that he wanted to give his support as a “business  
2 decision,” and Cornelsen would have known about the contributions.<sup>40</sup>

3 On April 24, 2012, Pate’s then-assistant Francesca Flemming sent an email to Cornelsen  
4 requesting reimbursement for the first two \$2,500 contributions.<sup>41</sup> On April 27, 2012, MV made  
5 a bonus payment to Pate via ACH electronic transfer in the gross amount of \$6,078.<sup>42</sup> MV states  
6 that this amount represented a net payment to Pate of \$5,000.<sup>43</sup> On September 27, 2013, Pate  
7 requested reimbursement for the third \$2,600 contribution.<sup>44</sup> On the same day, MV made a  
8 bonus payment to Pate via “manual check,” which it states represented a net payment of  
9 \$2,600.<sup>45</sup>

10 **D. Cantor for Congress Contribution**

11 On June 20, 2012, Pate made a \$500 contribution to Cantor for Congress using a check  
12 from his personal checking “special account.”<sup>46</sup>

13 On June 25, 2012, Flemming sent an email to Cornelsen asking for reimbursement of the  
14 contribution.<sup>47</sup> On the same day, Cornelsen sent an email to an individual who worked in Payroll

---

<sup>39</sup> Pate MOI at 10.

<sup>40</sup> *Id.*

<sup>41</sup> MV Supp. Submission at 3, Ex. A, MVT-FEC000010 (May 13, 2015).

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 5, Ex. A, MVT-FEC000018-19. On September 26, 2013, Cornelsen requested that Payroll “gross up a check based on a net amount of \$2,600” that day. *Id.* at Ex. A, MVT-FEC000019. An individual from Payroll replied that grossed-up checks had to be “manual checks” in order to ensure the accuracy of taxes, and that she would contact Pate’s assistant to have the check printed and delivered to Pate. *Id.* at Ex. A, MVT-FEC000018. Cornelsen then asked, “Did bonus go out as well?” to which Payroll stated “Yes the bonus went out as direct deposit.” *Id.* Although MV originally informed the Commission that Pate was reimbursed via ACH electronic transfer like the other reimbursements, it now states that, upon further review, Pate’s payroll records “reflect that he received a bonus via direct deposit to which he was entitled under his employment contract on or about the same day that he was reimbursed for the \$2,600 contribution to Congressman Sessions via manual check.” *See* MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>45</sup> MV Supp. Submission at 5 (May 13, 2015); MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>46</sup> MV Supp. Submission at 3, Ex. A, MVT-FEC000014 (May 13, 2015); Cantor for Congress 2012 Oct. Quarterly Rpt. at 95 (Oct. 15, 2012) (reporting receipt of \$500 contribution on July 13, 2012).

1 approving Pate's request.<sup>48</sup> On June 29, 2012, MV made a bonus payment to Pate via ACH  
2 electronic transfer in the gross amount of \$38,969.<sup>49</sup> MV states that this bonus included a  
3 \$507.35 "grossed up" reimbursement of the \$500 contribution.<sup>50</sup>

#### 4 E. Romney Victory Contribution

5 On September 10, 2012, Pate made a \$25,000 contribution to Romney Victory, Inc., a  
6 joint fundraising committee.<sup>51</sup> MV states that contribution was made in connection with Pate's  
7 attendance at a Romney campaign event.<sup>52</sup>

8 On August 31, 2012, Flemming sent an email to Cornelsen requesting advance payment  
9 to Pate for the contribution.<sup>53</sup> On September 4, 2012, Cornelsen sent an email requesting that  
10 Payroll "gross up 25k to Carter Pate today."<sup>54</sup> On September 5, 2012, MV made a bonus  
11 payment to Pate via ACH electronic transfer in the gross amount of \$36,977.<sup>55</sup> MV states that  
12 this amount represented a net payment of \$25,000 to Pate.<sup>56</sup>

---

<sup>47</sup> MV Supp. Submission at 4, Ex. A, MVT-FEC000012 (May 13, 2015).

<sup>48</sup> *Id.* Handwriting on the email states that a "gross \$507.35" equals a "net \$500." MV Supp. Submission at Ex. A, MVT-FEC000012 (May 13, 2015).

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.*

<sup>51</sup> MV Supp. Submission at 4 (May 13, 2015); Romney Victory, Inc. Amended 2012 Oct. Quarterly Rpt. at 25,211 (June 15, 2013) (reporting receipt of \$25,000 contribution on September 24, 2012). MV did not provide a copy of this check, but did provide a copy of the check ledger for the contribution. MV Supp. Submission at 3, Ex. A, MVT-FEC000022 (May 13, 2015). The ledger has a hand-written "reimbursed" notation. *Id.*

<sup>52</sup> *Id.* at 4. During MV's internal investigation, Pate stated that he wanted access to certain state transportation secretaries who were attending the event, but could not recall who initially suggested his attendance and did not discuss his attendance with anyone at the company prior to attending the event. Pate MOI at 11. However, emails included in the submission suggest that he discussed the event with Flemming and Cornelsen. Within 15 minutes of Flemming's request to Cornelsen for advance reimbursement of the \$25,000 contribution, Pate responded to clarify that Flemming had meant "secretaries of transportation" when she had written that there would be three secretaries of state attending. MV Transportation Supp. Submission at Ex. A, MVT-FEC000023 (May 13, 2015).

<sup>53</sup> *Id.* at 4, Ex. A, MVT-FEC000020-21.

<sup>54</sup> *Id.* at Ex. A, MVT-FEC000020.

<sup>55</sup> *Id.* at 4.

<sup>56</sup> *Id.*



III. LEGAL ANALYSIS

A. There is Reason to Believe that MV Knowingly and Willfully Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) by Making Contributions in the Name of Another

The Federal Election Campaign Act of 1971, as amended, (“the Act”) prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution.<sup>57</sup> The term “person” for purposes of the Act and Commission regulations includes corporations.<sup>58</sup>

Principals are liable vicariously for the acts of their agents committed within the scope of agency.<sup>59</sup> The record indicates that Pate believed that he had authority to make federal political contributions as MV’s CEO, and made the contributions as “business decisions” to benefit the company.<sup>60</sup> Moreover, Cornelsen, as CFO, and other agents of MV approved and issued the reimbursements to Pate. Accordingly, based on Pate’s and other MV officers’ statements and actions, the Commission finds reason to believe that MV made contributions in the name of another in violation of section 30122.

Principals also can be held vicariously liable for the knowing and willful acts of their agents, even if those agents conceal their acts from the principal.<sup>61</sup> Here, the facts indicate that

<sup>57</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(ii).

<sup>58</sup> See 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

<sup>59</sup> See RESTATEMENT (THIRD) OF AGENCY § 7.07; *United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against corporation in connection with a contribution reimbursement scheme where officer hid scheme from others in corporation but acted to benefit the corporation); see, e.g., Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*); Factual & Legal Analysis at 4-5, MUR 6143 (Galen Capital Group, *et al.*).

<sup>60</sup> See MV Supp. Submission at 2-5, Ex. A (May 13, 2015); Pate MOI at 4-11.

<sup>61</sup> See Factual & Legal Analysis at 19, MUR 6922 (ACPAC, *et al.*) (noting that certain facts, including the agent’s attempts to conceal the violations and “avoid a known legal duty” within the scope of his responsibility, “suggest[ed] a sufficient basis to support a knowing and willful violation” against the principal based on the actions of the agent); Factual & Legal Analysis at 8, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (noting that the knowing and willful actions of three officers could be imputed to the union even though the reimbursements were not approved by the full executive board). In those cases, the Commission ultimately exercised its discretion

1 MV acted knowingly and willfully, despite Pate's assertion that he did not know that corporate  
2 reimbursement for federal political contributions was improper.<sup>62</sup> A violation of the Act is  
3 knowing and willful if the "acts were committed with full knowledge of all the relevant facts and  
4 a recognition that the action is prohibited by law."<sup>63</sup> This does not require proving knowledge of  
5 the specific statute or regulations that the respondent allegedly violated.<sup>64</sup> Instead, it is sufficient  
6 that the respondent "acted voluntarily and was aware that his conduct was unlawful."<sup>65</sup> This may  
7 be shown by circumstantial evidence from which the respondents' unlawful intent reasonably  
8 may be inferred.<sup>66</sup>

9 One example of such circumstantial evidence is "the [person's] elaborate scheme for  
10 disguising their political contributions."<sup>67</sup> Here, although the submission claims that the  
11 reimbursements "were always transparent within the records of the company, and neither MV

---

and did not pursue knowing and willful findings for all of the activity in question. In MUR 6922, the Commission did not pursue knowing and willful findings against the two principals because the agent affirmatively sought to conceal the scheme from senior management, including the treasurer. In MUR 6515, the Commission did not pursue knowing and willful findings against the union for \$1,375 in reimbursements because those reimbursements lacked the planning and full Board knowledge of the larger scheme for which the Commission did make knowing and willful findings against the union. We do not, however, recommend that the Commission exercise its discretion in MV's case. Unlike the agent in MUR 6922, Pate was a senior executive officer and involved the treasurer and several other subordinate employees in his scheme. And unlike the secondary scheme in MUR 6515, Pate's requests for reimbursements were part of one, ongoing, principal scheme. Further, the amount in violation here, \$43,100, is much greater than the \$1,375 at issue in MUR 6515.

<sup>62</sup> See Amended Submission at 2.

<sup>63</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>64</sup> *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>65</sup> *Id.*

<sup>66</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>67</sup> *Id.* at 214-15; see also Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*). As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Hopkins*, 916 F.2d at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 nor Pate took any efforts to hide or disguise the federal contributions,"<sup>68</sup> the records included in  
2 the submission suggest otherwise. The reimbursements appear to have been coded as bonuses  
3 rather than reimbursed business expenses, and the reimbursed amounts often were included  
4 within larger payments to Pate.<sup>69</sup> In addition, based on MV's assertions, its CEO failed to  
5 inform the Board of the reimbursements despite the Board's clear policy that the Compensation  
6 Committee approve any executive bonuses.<sup>70</sup> Further, as information in the Commission's  
7 possession suggests, Pate may have falsely advised Cornelsen that MV's General Counsel and  
8 Board agreed that the contributions were to be reimbursed on a tax gross up basis. Thus, Pate's  
9 requests for reimbursements may have been known to certain employees within MV (all of  
10 whom appear to have been his subordinates), but Pate's actions were not "transparent."

11 There are other aggravating factors present here that the Commission has relied on when  
12 making a knowing and willful finding against a *sua sponte* respondent. They include: the  
13 involvement of a company's most senior officers in the reimbursement scheme; likely  
14 knowledge of the Act's prohibitions and limitations; and ongoing patterns of conduct repeated  
15 over an extended period of time.<sup>71</sup> Here, although MV has been cooperative throughout the *sua*  
16 *sponte* process, Pate and Cornelsen were both senior officers and engaged in the conduct at issue  
17 for more than two years, in apparent contradiction to MV's own policies and procedures.<sup>72</sup> It

---

<sup>68</sup> Amended Submission at 3.

<sup>69</sup> See MV Supp. Submission at 2-5, Ex. A (May 13, 2015).

<sup>70</sup> See *id.* at 6, Ex. D; MV Supp. Submission at 2 (Oct. 9, 2015).

<sup>71</sup> See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,697 (Apr. 7, 2007) ("*Sua Sponte* Policy"); see, e.g., Factual & Legal Analysis at 7, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where officers submitted false expense forms to receive reimbursements for political contributions); Factual & Legal Analysis at 6, MUR 6143 (Galen Capital Group, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where CEO and other conduits signed donor cards containing warnings against reimbursed contributions and where CEO attempted to conceal true purpose of reimbursement checks).

<sup>72</sup> See MV Supp. Submission at 6, Ex. D (May 13, 2015) (providing MV's reimbursement and bonus approval policies); Klicka MOI at 2-3, 7 (noting Klicka's belief that reimbursement requests for political contributions should

1 does not appear that Pate, Cornelsen, or any other high-level MV officer performed any due  
2 diligence or legal review concerning these reimbursements despite procedures in place to do so.  
3 The record also shows that Pate had significant experience with federal political fundraising and  
4 made federal contributions, which strongly suggests that he was aware of the Act's basic  
5 prohibitions and limitations.<sup>73</sup> According to Commission records, Pate has contributed over  
6 \$100,000 to federal candidates and political committees since 1999.<sup>74</sup> In addition, based on  
7 MV's internal investigation, Pate was familiar with and concerned about violating local and state  
8 campaign finance and ethics rules, including "pay-to-play" laws.<sup>75</sup> With this level of experience  
9 and knowledge, Pate also would likely have been familiar with the federal prohibitions against  
10 contributions in the name of another and contributions by corporations and federal contractors.

11 **B. There is Reason to Believe that MV Knowingly and Willfully Violated 52 U.S.C.**  
12 **§ 30118(a) and 11 C.F.R. § 114.2(b) by Making Corporate Contributions**

13 The Act prohibits corporations from making contributions to a federal political  
14 committee other than independent expenditure-only political committees, and further prohibits  
15 any officer of a corporation from consenting to any such contribution by the corporation.<sup>76</sup> Here,  
16 because MV acknowledges that it made prohibited corporate contributions to candidate  
17 committees, the Commission finds reason to believe that they also violated section 30118(a).

---

have been processed through MV's "Quask" accounting system and gone through legal review, but "[s]ome must have gotten done without going through [Q]uask" and "there is obviously a lack of controls").

<sup>73</sup> See *supra* note 11.

<sup>74</sup> See <http://www.fec.gov/finance/disclosure/norindsea.shtml> (search results for "Carter Pate") (last accessed Oct. 29, 2015).

<sup>75</sup> See Pate MOI at 4-5 (noting that Pate was "focused on local rules and procurement and making sure there was no pay-for-play"); *id.* at 8 (noting Pate's belief that MV's legal department was "constantly confirming they are not in violation of local regulations"); *id.* at 13 (noting that Pate was concerned about MV getting "challenged for pay-to-play" regarding a contribution to a Texas gubernatorial candidate); *id.* at 14 (noting that Pate "looked into" the corporate contribution rules in Georgia); Wiley MOI at 5 (noting that Pate "was always careful to keep his nose clean" and that PricewaterhouseCooper's government affairs office regularly communicated with all the partners and staff "about 'the do's and don'ts [sic]'" of handling political contributions).

<sup>76</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (e).

1 Additionally, for many of the same reasons discussed above, the Commission finds  
2 reason to believe that MV knowingly and willfully violated section 30118(a). Specifically, the  
3 record strongly suggests that Pate attempted to conceal the conduct and had knowledge of the  
4 basic prohibitions and limitations of the Act, including the prohibition against corporate  
5 contributions.

6 **C. There is Reason to Believe that MV Knowingly and Willfully Violated 52 U.S.C.**  
7 **§ 30119(a) and 11 C.F.R. § 115.2 by Making Contributions as a Federal**  
8 **Contractor**

9 The Act prohibits any person who is negotiating or performing a contract with the United  
10 States government or any of its agencies or departments from making a contribution to any  
11 political party, political committee, federal candidate, or “any person for any political purpose or  
12 use.”<sup>77</sup> Here, government records indicate that MV was a federal contractor pursuant to  
13 Commission regulations at the time Pate made the six contributions.<sup>78</sup> Accordingly, the  
14 Commission finds reason to believe that MV violated section 30119(a).

15 Again, for the reasons discussed above, the Commission finds reason to believe that MV  
16 knowingly and willfully violated section 30119(a). The record strongly suggests that Pate  
17 attempted to conceal the conduct and had knowledge of the basic prohibitions and limitations of  
18 the Act, including “pay-to-play” rules and the federal contractor prohibition.

<sup>77</sup> 52 U.S.C. § 30119(a); 11 C.F.R. §§ 115.1, 115.2.

<sup>78</sup> See e.g., <https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=A0B4180D-683C-1D5C-4E62-0D6F255C9975&AwardID=7274808&AwardType=C> (listing a federal contract effective from September 1, 2011, to August 31, 2012); <https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=BA44EFBC-E579-9DDA-0820-1B3E2B7483C9&AwardID=7274808&AwardType=C> (listing a federal contract effective from September 1, 2012, to August 31, 2013).

1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 **MUR:**

6  
7 **RESPONDENT:** R. Carter Pate  
8

9 **I. INTRODUCTION**

10 This matter was generated by a joint *sua sponte* submission by MV Transportation, Inc.  
11 (“MV”) and R. Carter Pate, MV’s former Chief Executive Officer (“CEO”). The submission  
12 notified the Commission that MV reimbursed Pate for six political contributions totaling \$43,100  
13 that Pate made to federal candidates and political committees between 2011 and 2013.  
14 For the reasons described below, the Commission finds reason to believe that Pate knowingly  
15 and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by making  
16 contributions in the name of another and knowingly permitting his name to be used to effect such  
17 contributions. Further, the Commission finds reason to believe that Pate knowingly and willfully  
18 violated 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2(e) by consenting to making prohibited  
19 corporate contributions.

20 **II. FACTUAL BACKGROUND**

21 MV is a privately held corporation providing passenger transportation services  
22 throughout the United States.<sup>1</sup> At the time of the joint *sua sponte* submission, Jon Monson  
23 served as CEO and on the Board of Directors.<sup>2</sup> Monson also served as CEO from 1999 through  
24 2011.<sup>3</sup>

---

<sup>1</sup> Amended Submission at 1-2.

<sup>2</sup> *See id.* at 1.

<sup>3</sup> *Id.*

1 R. Carter Pate became CEO of MV in late 2011.<sup>4</sup> In that capacity, he also served on the  
2 Board of Directors.<sup>5</sup> Before that, Pate was the Global and U.S. Managing Partner for the Capital  
3 Projects, Infrastructure, and Government Practice at PricewaterhouseCoopers.<sup>6</sup> Pate retired as  
4 MV's CEO and Board member in September 2014.<sup>7</sup> As of September 2014, however, he  
5 continued to work with MV as a Strategic Advisor to the Board.<sup>8</sup> Throughout his career as an  
6 executive, Pate had significant experience with federal political campaigns and fundraising.

7 Brad Cornelsen was CFO of MV.<sup>9</sup> According to the joint *sua sponte* submission, MV  
8 terminated Cornelsen's employment in April 2014 for reasons unrelated to the reimbursements at  
9 issue in this matter.<sup>10</sup>

10 During MV's internal analysis of executive compensation in April 2014, Pate "reported  
11 certain unusual executive bonus payments" to the MV Board.<sup>11</sup> The Board then retained a law  
12 firm to conduct an internal investigation "regarding the executive bonus payments and other  
13 possible financial irregularities."<sup>12</sup> Through this investigation, the Board learned that between  
14 2011 and 2013, MV had reimbursed Pate for six federal political contributions totaling  
15 \$43,100.<sup>13</sup>

---

<sup>4</sup> *Id.* at 2; Statement of R. Carter Pate ¶ 1 (Apr. 30, 2015) (attached to Pate Supp. Submission (May 4, 2015)) ("Pate Statement").

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Amended Submission at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *See id.* at 1. The submission does not state when MV hired Cornelsen. *See id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

1 Pate believed that as CEO, he had the authority to make all six federal contributions.<sup>14</sup>  
2 Further, MV asserts that until the internal investigation, the Board did not know that MV had  
3 reimbursed Pate with corporate funds for federal contributions.<sup>15</sup> As indicated by information in  
4 the Commission's possession, MV's bonus policy requires that any bonus for executive officers  
5 "be in writing in employment agreements," and approved by the Board's Compensation  
6 Committee. Nevertheless, other information in the Commission's possession also indicates that  
7 the Board did not approve Pate's bonuses as required under the policy because the  
8 reimbursements were not presented to them for approval — no Board members other than Pate  
9 and Cornelsen knew that corporate reimbursement for federal contributions had taken place.  
10 Based on the record before the Commission, it appears that Pate did not submit the  
11 reimbursements to the Board because he thought that contribution reimbursements did not  
12 require Board approval. The Commission possesses information, however, suggesting that Pate  
13 told Cornelsen that MV's General Counsel and the Board agreed that the contributions were to  
14 be reimbursed to Pate on a tax 'gross-up' basis. Although information in the record suggests that  
15 it was the CFO's responsibility to enforce MV's executive compensation policy, it appears that  
16 Cornelsen never confirmed that the Board had approved the requested reimbursements.

17 Pate states that he did not learn that corporate reimbursement for federal contributions  
18 was improper until an external law firm identified the contributions as an issue.<sup>16</sup>

19 **A. RickPerry.org Contribution**

20 On August 24, 2011, Pate made a \$5,000 contribution to RickPerry.org using a check  
21 from his personal account.<sup>17</sup> Based on the Commission's disclosure records, Pate held this

---

<sup>14</sup> See Pate Statement ¶ 2.

<sup>15</sup> Amended Submission at 2.

<sup>16</sup> Pate Statement ¶ 2; *see also* Amended Submission at 2.



1 account jointly with his wife Angela, and half of the contribution was reattributed to her.<sup>18</sup> The  
2 record before the Commission indicates that Pate believed that as CEO, he had the authority to  
3 make the contributions, and did not seek or obtain approval from the Board or any other MV  
4 executive before making the RickPerry.org contribution. The Commission, however, also  
5 possesses information indicating that Monson, MV's then-Chairman of the Board, Kevin Klicka,  
6 MV's then-Chief Operating Officer ("COO"), and David Smith, MV's then-Vice President of  
7 Business Development, knew of the contribution. Specifically, it appears that Monson, with  
8 Klicka's assistance, sent Smith to represent MV at an October 4, 2011, RickPerry.org  
9 fundraising event using Pate's contribution as the ticket fee.

10 On November 15, 2011, Pate sent an email to his then-assistant, Jo Cobb, asking that she  
11 provide a copy of the check to Cornelsen for reimbursement.<sup>19</sup> Pate sent a copy of this email to  
12 Cornelsen.<sup>20</sup> Pate states that he does not recall specific correspondence from Cornelsen  
13 approving and authorizing the reimbursement.<sup>21</sup> Nevertheless, Pate asserts that MV reimbursed  
14 him for the contribution.<sup>22</sup>

#### 15 B. Mica for Congress Contribution

16 On December 5, 2011, Pate made a \$5,000 contribution to Mica for Congress using a  
17 check from his personal checking account.<sup>23</sup> As the information before the Commission  
18 indicates, Pate did not write the check, but instead signed it in advance and had his assistant

---

<sup>17</sup> Pate Statement ¶¶ 5-6.

<sup>18</sup> See RickPerry.org Amended 2011 Oct. Quarterly Rpt. at 2,286 (Nov. 4, 2011) (reporting reattribution of \$2,500 of Robert Pate's \$5,000 contribution to Angela Pate on August 29, 2011).

<sup>19</sup> Pate Statement ¶ 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See *id.* ¶ 5.

<sup>23</sup> Pate Statement ¶ 7; Mica for Congress Amended 2011 Year-End Rpt. at 30-31 (May 5, 2012) (reporting receipt of two \$2,500 contributions on December 19, 2011).

1 “release” it. The record also indicates that Pate made this contribution in connection with his  
2 attendance at a Mica for Congress fundraising breakfast on December 8, 2011.<sup>24</sup>

3 The Commission possesses information indicating that on December 16, 2011, MV made  
4 a bonus payment to Pate via ACH electronic transfer in the gross amount of \$8,925, and that this  
5 amount represented a net payment of \$7,000 to Pate, \$5,000 of which constituted a  
6 reimbursement for Pate’s contribution.<sup>25</sup>

### 7 C. Pete Sessions for Congress Contributions

8 On April 24, 2012, Pate made a \$5,000 contribution to Pete Sessions for Congress using  
9 two \$2,500 checks from his personal checking account.<sup>26</sup> Additionally, on September 27, 2013,  
10 Pate asserts that he made a \$2,600 contribution to Pete Sessions for Congress.<sup>27</sup> The  
11 Commission’s disclosure records, however, indicate that Pete Sessions for Congress attributed  
12 \$1,300 of this contribution to Pate and \$1,300 to his wife.<sup>28</sup> The Commission possesses  
13 information indicating that Pate wanted to give his support to Representative Sessions as a  
14 business decision, and Cornelsen would have known about the contributions.

15 On April 24, 2012, Pate’s secretary sent an email to Cornelsen requesting reimbursement  
16 for the first two \$2,500 contributions.<sup>29</sup> As the information before the Commission indicates, on  
17 April 27, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross  
18 amount of \$6,078, which represented a net payment to Pate of \$5,000. On September 27, 2013,

<sup>24</sup> The Commission possesses information indicating that Pate did not see the brochure for the breakfast, which stated that corporate contributions were prohibited.

<sup>25</sup> Pate states that he does not recall specific correspondence seeking reimbursement for this contribution, but “based on standard practice,” believes that his secretary “provided the particulars of the contribution to the CFO, who approved and authorized reimbursement.” Pate Statement ¶ 7.

<sup>26</sup> *Id.* ¶ 8; Pete Sessions for Congress 2012 Pre-Primary Rpt. at 9 (May 16, 2012) (reporting receipt of two \$2,500 contributions on May 5, 2012).

<sup>27</sup> Pate Statement ¶ 8.

<sup>28</sup> See Pete Sessions for Congress 2013 Oct. Quarterly Rpt. at 56-57 (Oct. 15, 2013).

<sup>29</sup> Pate Statement ¶ 8.

1 Pate requested reimbursement for the third \$2,600 contribution.<sup>30</sup> The Commission possesses  
2 information indicating that on the same day, MV made a bonus payment to Pate via "manual  
3 check," which represented a net payment of \$2,600.

#### 4 **D. Cantor for Congress Contribution**

5 On June 20, 2012, Pate made a \$500 contribution to Cantor for Congress using a check  
6 from his personal checking account.<sup>31</sup>

7 On June 25, 2012, Pate's secretary sent an email to Cornelsen asking for reimbursement  
8 of the contribution.<sup>32</sup> On the same day, Cornelsen sent an email to an individual who worked in  
9 Payroll approving Pate's request.<sup>33</sup> As the information in the Commission's possession  
10 indicates, on June 29, 2012, MV made a bonus payment to Pate via ACH electronic transfer in  
11 the gross amount of \$38,969, which included a \$507.35 "grossed up" reimbursement of the \$500  
12 contribution.

#### 13 **E. Romney Victory Contribution**

14 On September 10, 2012, Pate made a \$25,000 contribution to Romney Victory, Inc., a  
15 joint fundraising committee.<sup>34</sup> The Commission possesses information indicating that the  
16 contribution was made in connection with Pate's attendance at a Romney campaign event.

17 On August 31, 2012, Pate's secretary submitted a reimbursement request for the  
18 contribution, which Cornelsen approved on September 4, 2012.<sup>35</sup> As the information in the

---

<sup>30</sup> *Id.* Pate states that he does not recall specific correspondence, but believes that Cornelsen approved reimbursement. *Id.*

<sup>31</sup> *Id.* ¶ 9; Cantor for Congress 2012 Oct. Quarterly Rpt. at 95 (Oct. 15, 2012) (reporting receipt of \$500 contribution on July 13, 2012).

<sup>32</sup> Pate Statement ¶ 9.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* ¶ 10; Romney Victory, Inc. Amended 2012 Oct. Quarterly Rpt. at 25,211 (June 15, 2013) (reporting receipt of \$25,000 contribution on September 24, 2012).

<sup>35</sup> Pate Statement ¶ 10.

Commission's possession indicates, on September 5, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$36,977, which represented a net payment of \$25,000 to Pate.

### III. LEGAL ANALYSIS

#### A. There is Reason to Believe that Pate Knowingly and Willfully Violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) and (ii) by Making Contributions in the Name of Another and Using His Name to Effect the Contributions

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a person from making a contribution in the name of another or knowingly permitting his or her name to be used to effect such a contribution.<sup>36</sup>

Based on Pate's actions, the Commission finds reason to believe that Pate made contributions in the name of another in violation of section 30122. Additionally, because Pate knowingly permitted his name to be used to effect the corporate contributions, the Commission finds reason to believe that Pate violated section 30122.

Here, the facts also indicate that Pate acted knowingly and willfully, despite Pate's assertion that he "did not know that corporate reimbursement for federal political contributions was improper."<sup>37</sup> A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>38</sup> This does not require proving knowledge of the specific statute or regulations that the respondent allegedly violated.<sup>39</sup> Instead, it is sufficient that the respondent "acted voluntarily and was aware

<sup>36</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(ii).

<sup>37</sup> See Pate Statement ¶ 2.

<sup>38</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>39</sup> *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

1 that his conduct was unlawful.”<sup>40</sup> This may be shown by circumstantial evidence from which the  
2 respondents’ unlawful intent reasonably may be inferred.<sup>41</sup>

3 One example of such circumstantial evidence is “the [person’s] elaborate scheme for  
4 disguising their political contributions.”<sup>42</sup> Here, although the submission claims that the  
5 reimbursements “were always transparent within the records of the company, and neither MV  
6 nor Pate took any efforts to hide or disguise the federal contributions,”<sup>43</sup> the Commission  
7 possesses information indicating otherwise. The reimbursements appear to have been coded as  
8 bonuses rather than reimbursed business expenses, and the reimbursed amounts often were  
9 included within larger payments to Pate. In addition, it appears that Pate failed to inform the  
10 Board of the reimbursements despite the Board’s clear policy that the Compensation Committee  
11 approve any executive bonuses. Further, the Commission possesses information suggesting that  
12 Pate may have falsely advised Cornelsen that MV’s General Counsel and Board agreed that the  
13 contributions were to be reimbursed on a tax gross up basis. Thus, Pate’s requests for  
14 reimbursements may have been known to certain employees within MV (all of whom appear to  
15 have been his subordinates), but Pate’s actions were not “transparent.”

16 There are other aggravating factors present here that the Commission has relied on when  
17 making a knowing and willful finding against a *sua sponte* respondent. They include: the  
18 involvement of a company’s most senior officers in the reimbursement scheme; likely

---

<sup>40</sup> *Id.*

<sup>41</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>42</sup> *Id.* at 214-15; *see also* Factual & Legal Analysis at 16, MUR 6922 (ACPAC, *et al.*). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Hopkins*, 916 F.2d at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>43</sup> Amended Submission at 3; *see also* Pate Statement ¶ 4.

1 knowledge of the Act's prohibitions and limitations; and ongoing patterns of conduct repeated  
2 over an extended period of time.<sup>44</sup> Here, although Pate has been cooperative throughout the *sua*  
3 *sponte* process, Pate was a senior officer and engaged in the conduct at issue for more than two  
4 years, in apparent contradiction to MV's own policies and procedures. The Commission does  
5 not possess any information indicating that that Pate, Cornelsen, or any other high-level MV  
6 officer performed any due diligence or legal review concerning these reimbursements despite  
7 procedures in place to do so. The record also shows that Pate had significant experience with  
8 federal political fundraising and made federal contributions, which strongly suggests that he was  
9 aware of the Act's basic prohibitions and limitations. According to Commission records, Pate  
10 has contributed over \$100,000 to federal candidates and political committees since 1999.<sup>45</sup> In  
11 addition, the Commission possesses information indicating that Pate was familiar with and  
12 concerned about violating local and state campaign finance and ethics rules, including "pay-to-  
13 play" laws. With this level of experience and knowledge, Pate also would likely have been  
14 familiar with the federal prohibitions against contributions in the name of another and  
15 contributions by corporations and federal contractors.

16 **B. There is Reason to Believe that Pate Knowingly and Willfully Violated 52 U.S.C.**  
17 **§ 30118(a) and 11 C.F.R. § 114.2(e) by Consenting to Corporate Contributions**

18 The Act prohibits corporations from making contributions to a federal political  
19 committee other than independent expenditure-only political committees, and further prohibits

---

<sup>44</sup> See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,697 (Apr. 7, 2007) ("*Sua Sponte* Policy"); see, e.g., Factual & Legal Analysis at 7, MUR 6515 (Professional Fire Fighters of Wisconsin, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where officers submitted false expense forms to receive reimbursements for political contributions); Factual & Legal Analysis at 6, MUR 6143 (Galen Capital Group, *et al.*) (finding reason to believe that respondents knowingly and willfully violated the Act where CEO and other conduits signed donor cards containing warnings against reimbursed contributions and where CEO attempted to conceal true purpose of reimbursement checks).

<sup>45</sup> See <http://www.fec.gov/finance/disclosure/norindsea.shtml> (search results for "Carter Pate") (last accessed Oct. 29, 2015).

1 any officer of a corporation from consenting to any such contribution by the corporation.<sup>46</sup> Here,  
2 because Pate consented to making prohibited corporate contributions to candidate committees,  
3 the Commission finds reason to believe that he violated section 30118(a).

4 Additionally, for many of the same reasons discussed above, the Commission finds  
5 reason to believe that Pate knowingly and willfully violated section 30118(a). Specifically, the  
6 record strongly suggests that Pate attempted to conceal the conduct and had knowledge of the  
7 basic prohibitions and limitations of the Act, including the prohibition against corporate  
8 contributions.

---

<sup>46</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (e).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **MUR:**

6  
7 **RESPONDENT:** Brad Cornelsen

8  
9 **I. INTRODUCTION**

10 This matter was initiated pursuant to information ascertained by the Commission in the  
11 normal course of carrying out its supervisory responsibilities. The Commission received  
12 information indicating that MV Transportation, Inc. ("MV") reimbursed MV's former Chief  
13 Executive Officer ("CEO"), R. Carter Pate ("Pate") for six political contributions totaling  
14 \$43,100 that Pate made to federal candidates and political committees between 2011 and 2013.  
15 The Commission also possesses information indicating that Pate or his secretary would send a  
16 copy of Pate's personal contribution check to Brad Cornelsen, MV's former Chief Financial  
17 Officer ("CFO"), for approval and reimbursement by the corporation, and that Cornelsen  
18 approved the six reimbursement requests.

19 For the reasons described below, the Commission finds reason to believe that Cornelsen  
20 violated 52 U.S.C. §§ 30122 and 30118(a) and 11 C.F.R. §§ 110.4(b)(iii) and 114.2(e) by  
21 helping and assisting Pate to make corporate contributions in the name of another.

22 **II. FACTUAL BACKGROUND**

23 The Commission has ascertained the following information as part of the normal course  
24 of carrying out its supervisory responsibilities.

25 MV is a privately held corporation providing passenger transportation services  
26 throughout the United States. Jon Monson served as CEO from 1999 through 2011, but is no  
27 longer a director of MV.



1 R. Carter Pate became CEO of MV in late 2011. In that capacity, he also served on the  
2 Board of Directors. Before that, Pate was the Global and U.S. Managing Partner for the Capital  
3 Projects, Infrastructure, and Government Practice at PricewaterhouseCoopers. Pate retired as  
4 MV's CEO and Board member in September 2014. As of September 2014, however, he  
5 continued to work with MV as a Strategic Advisor to the Board. Throughout his career as an  
6 executive, Pate had significant experience with federal political campaigns and fundraising.

7 Brad Cornelsen was CFO of MV, and Cornelsen's employment ended in April 2014.

8 During MV's internal analysis of executive compensation in April 2014, Pate reported  
9 certain unusual executive bonus payments" to the MV Board. The Board then retained a law  
10 firm to conduct an internal investigation regarding the executive bonus payments and other  
11 possible financial irregularities. Through this investigation, the Board learned that between 2011  
12 and 2013, MV had reimbursed Pate for six federal political contributions totaling \$43,100.

13 Pate believed that as CEO, he had the authority to make all six federal contributions, and  
14 did not seek or obtain approval from the Board or any other MV executive before making them.  
15 It appears that until the internal investigation, the Board did not know that MV had reimbursed  
16 Pate with corporate funds for federal contributions. Further, MV's bonus policy requires that  
17 any bonus for executive officers be in writing in employment agreements, and approved by the  
18 Board's Compensation Committee. Nevertheless, it appears that the Board did not approve  
19 Pate's bonuses as required under the policy because the reimbursements were not presented to  
20 them for approval — no Board members other than Pate and Cornelsen knew that corporate  
21 reimbursement for federal contributions had taken place.

22 Based on the information before the Commission, it appears that Pate did not submit the  
23 reimbursements to the Board because he thought that contribution reimbursements did not

1 require Board approval. Although the Commission possesses information suggesting that it was  
2 the CFO's responsibility to enforce MV's executive compensation policy,<sup>1</sup> it appears that  
3 Cornelsen never confirmed that the Board had approved the requested reimbursements.<sup>2</sup>

4 **A. RickPerry.org Contribution**

5 On August 24, 2011, Pate made a \$5,000 contribution to RickPerry.org using a check  
6 from his personal account. Based on the Commission's disclosure records, Pate held this  
7 account jointly with his wife Angela, and half of the contribution was reattributed to her.<sup>3</sup>

8 On November 15, 2011, Pate sent an email to his then-assistant, Jo Cobb, asking that she  
9 provide a copy of the check to Cornelsen for reimbursement, and that Pate sent a copy of this  
10 email to Cornelsen. The Commission also possesses information indicating that Pate does not  
11 recall specific correspondence from Cornelsen approving and authorizing the reimbursement, but  
12 MV reimbursed him for the contribution.

13 **B. Mica for Congress Contribution**

14 On December 5, 2011, Pate made a \$5,000 contribution to Mica for Congress using a  
15 check from his personal checking account.<sup>4</sup> Pate did not write the check, but instead signed it in  
16 advance and had his assistant "release" it. Pate made this contribution in connection with his  
17 attendance at a Mica for Congress fundraising breakfast on December 8, 2011.

<sup>1</sup> Cornelsen himself states that his processing of reimbursement requests included "review of the expenditure's approval in accordance with the MV signing authority/approval matrix." Cornelsen Resp. at 1.

<sup>2</sup> See *id.* (asserting that Cornelsen "followed Pate's strict instructions relative to his assertion of the contributions prior approval . . . in accordance with the MV [Transportation] signing authority/approval matrix").

<sup>3</sup> See RickPerry.org Amended 2011 Oct. Quarterly Rpt. at 2,286 (Nov. 4, 2011) (reporting reattribution of \$2,500 of Robert Pate's \$5,000 contribution to Angela Pate on August 29, 2011).

<sup>4</sup> See Mica for Congress Amended 2011 Year-End Rpt. at 30-31 (May 5, 2012) (reporting receipt of two \$2,500 contributions on December 19, 2011).

1 On December 16, 2011, MV made a bonus payment to Pate via ACH electronic transfer  
2 in the gross amount of \$8,925, and that this amount represented a net payment of \$7,000 to Pate,  
3 \$5,000 of which constituted a reimbursement for Pate's contribution.<sup>5</sup>

4 **C. Pete Sessions for Congress Contributions**

5 On April 24, 2012, Pate made a \$5,000 contribution to Pete Sessions for Congress using  
6 two \$2,500 checks from his personal checking account.<sup>6</sup> Additionally, on September 27, 2013,  
7 Pate made a \$2,600 contribution to Pete Sessions for Congress. The Commission's disclosure  
8 records, however, indicate that Pete Sessions for Congress attributed \$1,300 of this contribution  
9 to Pate and \$1,300 to his wife.<sup>7</sup> The Commission possesses information indicating that Pate  
10 wanted to give his support to Representative Sessions as a business decision, and Cornelsen  
11 would have known about the contributions.

12 On April 24, 2012, Pate's secretary sent an email to Cornelsen requesting reimbursement  
13 for the first two \$2,500 contributions. In addition, on April 27, 2012, MV made a bonus  
14 payment to Pate via ACH electronic transfer in the gross amount of \$6,078, which represented a  
15 net payment to Pate of \$5,000. On September 27, 2013, Pate requested reimbursement for the  
16 third \$2,600 contribution.<sup>8</sup> On the same day, MV made a bonus payment to Pate via "manual  
17 check," which represented a net payment of \$2,600.

<sup>5</sup> The Commission possesses information indicating that Pate does not recall specific correspondence seeking reimbursement for this contribution, but based on standard practice, believes that his secretary provided the particulars of the contribution to the CFO, who approved and authorized reimbursement.

<sup>6</sup> See Pete Sessions for Congress 2012 Pre-Primary Rpt. at 9 (May 16, 2012) (reporting receipt of two \$2,500 contributions on May 5, 2012).

<sup>7</sup> See Pete Sessions for Congress 2013 Oct. Quarterly Rpt. at 56-57 (Oct. 15, 2013).

<sup>8</sup> The Commission possesses information indicating that Pate does not recall specific correspondence, but believes that Cornelsen approved reimbursement.

**D. Cantor for Congress Contribution**

On June 20, 2012, Pate made a \$500 contribution to Cantor for Congress using a check from his personal checking account.<sup>9</sup>

On June 25, 2012, Pate's secretary sent an email to Cornelsen asking for reimbursement of the contribution. On the same day, Cornelsen sent an email to an individual who worked in Payroll approving Pate's request. On June 29, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$38,969, which included a \$507.35 "grossed up" reimbursement of the \$500 contribution.

**E. Romney Victory Contribution**

On September 10, 2012, Pate made a \$25,000 contribution to Romney Victory, Inc., a joint fundraising committee.<sup>10</sup> The contribution was made in connection with Pate's attendance at a Romney campaign event.

On August 31, 2012, Pate's secretary submitted a reimbursement request for the contribution, which Cornelsen approved on September 4, 2012. On September 5, 2012, MV made a bonus payment to Pate via ACH electronic transfer in the gross amount of \$36,977, which represented a net payment of \$25,000 to Pate.

The Commission notified Cornelsen that it received information the normal course of carrying out its supervisory responsibilities indicating that he may have violated the Federal Election Campaign Act of 1971, as amended, ("the Act") and provided Cornelsen an opportunity to respond. Cornelsen states that Pate told him that MV's General Counsel and the Board

<sup>9</sup> See Cantor for Congress 2012 Oct. Quarterly Rpt. at 95 (Oct. 13, 2012) (reporting receipt of \$500 contribution on July 13, 2012).

<sup>10</sup> See Romney Victory, Inc. Amended 2012 Oct. Quarterly Rpt. at 25,211 (June 15, 2013) (reporting receipt of \$25,000 contribution on September 24, 2012).

1 “agreed these contributions were to be reimbursed to him on a tax ‘gross-up’ basis.”<sup>11</sup> Cornelsen  
2 also asserts that he “is not familiar with the Federal Election Campaign Act regulations and  
3 relied implicitly on Pate’s prior experience as former Virginia State Finance Chair.”<sup>12</sup>

### 4 III. LEGAL ANALYSIS

#### 5 A. There is Reason to Believe that Cornelsen Violated 52 U.S.C. § 30122 and 6 11 C.F.R. § 110.4(b)(1)(iii) by Knowingly Helping and Assisting Pate Make 7 Contributions in the Name of Another

8 The Act prohibits a person from making a contribution in the name of another or  
9 knowingly permitting his or her name to be used to effect such a contribution.<sup>13</sup> That prohibition  
10 extends to knowingly helping or assisting any person in making a contribution in the name of  
11 another.<sup>14</sup> The Commission has explained that “knowingly helping or assisting” a false-name  
12 contribution would reach the conduct of “those who initiate or instigate or have some significant  
13 participation in a plan or scheme to make a contribution in the name of another.”<sup>15</sup>

14 Here, by processing and approving Pate’s reimbursement requests, Cornelsen caused MV  
15 to make contributions in Pate’s name, and therefore played a significant and integral role in  
16 Pate’s scheme.<sup>16</sup> Although Cornelsen asserts that he did not have authority to approve  
17 reimbursements,<sup>17</sup> the record suggests otherwise. The Commission possesses information  
18 indicating that for each reimbursement, Pate’s secretary would send a copy of the contribution  
19 check to Cornelsen, who would then direct an individual in the Payroll department to “gross up”

---

<sup>11</sup> Cornelsen Resp. at 1.

<sup>12</sup> *Id.*

<sup>13</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i)-(ii).

<sup>14</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(iii).

<sup>15</sup> Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

<sup>16</sup> *Cf., e.g.,* Factual & Legal Analysis at 7, MUR 5948 (Critical Health Systems, Inc., *et al.*) (finding reason to believe that respondent knowingly helped and assisted in the making of contributions in the name of another by handling and processing payments to conduits).

<sup>17</sup> *See* Cornelsen Resp. at 1.

1 the appropriate amount to Pate, including an instance in which he marked the reimbursement  
2 “approved.” Based on this information, the Commission finds reason to believe that Cornelsen  
3 violated section 30122.

4 Although Cornelsen was a senior officer, appears to have knowingly processed the  
5 reimbursements as bonuses, and failed to confirm whether the Board had approved the  
6 reimbursements — which might suggest that he aided in concealing the transactions — given the  
7 specific circumstances of this case, the Commission declines to proceed on a knowing and  
8 willful basis against him. Cornelsen asserts that Pate advised him that MV’s General Counsel  
9 and Board had approved the bonuses.<sup>18</sup> Moreover, there is no evidence in the record to suggest  
10 that Cornelsen had any past experience with federal political fundraising and contributions.<sup>19</sup>

11 **B. There is Reason to Believe that Cornelsen Violated 52 U.S.C. § 30118(a) and**  
12 **11 C.F.R. § 114.2(e) by Consenting to Corporate Contributions**

13 The Act prohibits corporations from making contributions to a federal political  
14 committee other than independent expenditure-only political committees, and further prohibits  
15 any officer of a corporation from consenting to any such contribution by the corporation.<sup>20</sup> Here,  
16 because Cornelsen consented to making prohibited corporate contributions to candidate  
17 committees, the Commission finds reason to believe that Cornelsen violated section 30118(a).

---

<sup>18</sup> Cornelsen Resp. at 1.

<sup>19</sup> According to Commission records, it does not appear that Cornelsen has made any reportable federal contributions.

<sup>20</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (e).